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OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209–AA00 and 3209–AA38

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics.

ACTION: Interim final rule.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the U.S. Office of Government Ethics (OGE) is issuing this rule to make inflation adjustments for each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE.

DATES: This interim final rule is effective August 1, 2016. Written comments are invited and must be received on or before August 1, 2016.

ADDRESSES: You may submit comments, in writing, to OGE on this interim final rule, identified by RINs 3209–AA00 and 3209–AA38, by any of the following methods:

Email: usoge@oge.gov. Include the reference "Civil Monetary Penalties Inflation Adjustments Interim Final Rule" in the subject line of the message.

Fax: (202) 482–9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005–3917, Attention: "Civil Monetary Penalties Inflation Adjustments Interim Final Rule."

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Numbers (RINs), 3209–AA00 and 3209–AA38, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Comments may be posted on OGE's Web site, *www.oge.gov.* Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202–482–9300; TTY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Government Ethics (OGE) is issuing this interim final rule as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410) (the Inflation Adjustment Act) to adjust for inflation the civil monetary penalties (CMPs) provided in the Ethics in Government Act of 1978 as amended, 5 U.S.C. appendix (the Ethics Act). As explained below, all of the Ethics Act CMPs are being raised in accordance with the formula set forth in the 2015 Act. These "catch-up" adjustments will improve the effectiveness of the Ethics Act CMPs and maintain their deterrent effect.

In revising the Inflation Adjustment Act, the 2015 Act requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment through an interim final rule. The 2015 Act also requires agencies to make subsequent annual inflationary adjustments of their CMPs. Under the 2015 Act, the interim final rule with the "catch-up" adjusted penalties must take effect by August 1, 2016. In the case of the Ethics Act CMPs, the effective date of this rulemaking regarding the "catch-up" adjustments is August 1, 2016.

OGE emphasizes that the increased civil monetary penalty amounts calculated under the 2015 Act are applicable only to civil penalties assessed after August 1, 2016 whose associated violations occurred after November 2, 2015, the date of enactment of the 2015 Act. Therefore, violations occurring on or before November 2, 2015, and assessments made on or before August 1, 2016 whose associated violations occurred after November 2, 2015, will continue to be subject to the civil monetary penalty amounts currently in effect. The modified OGE regulatory provisions will reflect the original, previously-adjusted and newly-adjusted Ethics Act CMP amounts. OGE will notify departments and agencies by memorandum of this rulemaking action and its effect.

Ethics Act CMPs

There are five CMPs provided for in the Ethics Act, as amended inter alia by the 1989 Ethics Reform Act and the 2007 Honest Leadership and Open Government Act (HLOGA). Specifically, the law provides for civil penalties that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following five types of violations: knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; negligent breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702(a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

In a 1999 rulemaking, 64 FR 47095, Aug. 30, 1989, OGE made inflation adjustments to the Ethics Act civil monetary penalties. These adjustments were mandated by the Debt Collection Improvement Act of 1996, section 31001 of Pub. L. 104–134, 110 Stat. 1321, which revised the Inflation Adjustment Act to require Federal agencies to adjust certain statutory CMPs for inflation. Prior to the 1999 rulemaking, the Ethics Act CMPs were set by statute in the Ethics Reform Act of 1989. In the 1999 rulemaking, OGE increased the maximum civil monetary penalties for knowing and willful breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions from $10,000 to $11,000. OGE also increased the maximum civil monetary penalty for negligent breach of a qualified trust by trustees and interested parties from $5,000 to $5,500. In that same rulemaking, OGE adjusted the maximum civil monetary penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report from $10,000 to $11,000; however, in the 2007 HLOGA, Congress statutorily increased that penalty to a maximum of $50,000. No further adjustments have been made to any of the Ethics Act CMPs described in this paragraph.

Late Filing Fee Not a CMP

The Office of Government Ethics notes that it has previously determined, after consultation with the Department of Justice, that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. appendix, 105(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted in this rulemaking (nor was it previously adjusted by OGE in the 1999 rulemaking), and will remain at its current amount of $200.

Calculation of Inflation Adjustments

The "catch-up" adjustments to civil monetary penalties mandated by the 2015 Act are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment (not made under the Inflation Adjustment Act), and the October 2015 CPI–U. The inflation adjustments are to be rounded to the nearest dollar, and agencies may not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. Subsequent annual adjustments for inflation mandated by the 2015 Act will be based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U.

With the exception of the penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report, 5 U.S.C. appendix, 104(a), 5 CFR 2634.701(b), all of the Ethics Act CMPs were last adjusted other than pursuant to the Inflation Adjustment Act by the 1989 Ethics Reform Act. (As discussed above, the adjustments made in the 1999 rulemaking were done pursuant to amendments to the Inflation Adjustment Act; the "catch-up" adjustment calculation established by the 2015 Act requires agencies to make adjustments based on when CMPs were established or last adjusted *other than* pursuant to the Inflation Adjustment Act.) For these CMPs, the adjusted penalties established by this rulemaking will be calculated by multiplying the penalty amount established by the 1989 Ethics Reform Act and 1.89361, the CPI–U multiplier for 1989. The penalty for knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report was most recently adjusted by statute in 2007 by HLOGA. For this CMP, the adjusted penalty established by this rulemaking will be calculated by multiplying the penalty amount established by HLOGA and 1.13833, the CPI–U multiplier for 2007. None of these adjusted penalties are more than 150 percent of the corresponding levels in effect on November 2, 2015.

Applying the formula established by the 2015 Act, OGE is amending the Ethics Act CMPs to further increase the three previously-adjusted $11,000 maximum penalties reflected in 5 CFR 2634.702(a) and 2634.703 and 5 CFR 2636.104(a), to a maximum of $18,936; to increase the one previously-adjusted $5,500 maximum penalty reflected in 2634.702(b), to a maximum of $9,468; and to increase the one previously-adjusted $50,000 maximum penalty, reflected in 5 CFR 2634.701(b), to a maximum of $56,916. As noted above, these new amounts apply only to civil monetary penalties that are assessed after August 1, 2016 whose associated violations occurred after November 2, 2015.

The Office of Government Ethics will also make future adjustments to the Ethics Act CMPs in accordance with the statutory formula set forth in the 2015 Act, which provides for annual adjustments for inflation.

II. Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as General Counsel of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 2015 Act, which specifies adoption through an interim final rulemaking. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect. However, OGE notes that, in order to provide an appropriate period for notification to executive branch departments and agencies and their employees, the effective date for this interim final rule is August 1, 2016.

Regulatory Flexibility Act

As the designee of the Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim final rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Executive Order 13563 and Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rulemaking has been reviewed by the Office of Management and Budget, even though it is not deemed "significant" under section 3(f) of Executive Order 12866 since it is limited to the adoption of statutorily mandated inflation adjustments without interpretation.

Executive Order 12988

As General Counsel of the Office of Government Ethics, I have reviewed this rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Dated: June 22, 2016.

David J. Apol,

General Counsel, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Section 2634.101 is revised to read as follows:

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

■ 3. Section 2634.701 is amended by revising paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) *Civil action.* The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly and willfully fails to file or report any information required by filers of public reports under subpart B of this part. The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 104(a) of the Act, as amended, and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation or assessment	Penalty
Violation occurring before Sept. 29, 1999	$10,000
Violation occurring between Sept. 29, 1999 and Sept. 13, 2007	11,000
Violation occurring between Sept. 14, 2007 and Nov. 2, 2015	50,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	50,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	56,916

* * * * *

■ 4. Section 2634.702 is revised to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(i) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation or assessment	Penalty
Violation occurring before Sept. 29, 1999	$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	11,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	11,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	18,936

(b) The Attorney General may bring a civil action in any appropriate United States district court against any individual who negligently violates the provisions of § 2634.408(d)(1) or (e)(1). The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 102(f)(6)(C)(ii) of the Act and as adjusted in accordance with the inflation adjustment procedures of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended:

Date of violation or assessment	Penalty
Violation occurring before Sept. 29, 1999	$5,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	5,500
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	5,500
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	9,468

■ 5. Section 2634.703 is revised to read as follows:

§ 2634.703 Misuse of public reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a report filed under this part for any purpose prohibited by section 105(c)(1) of the Act, as incorporated in § 2634.603(f). The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed the amounts set forth below, as provided by section 105(c)(2) of the Act and as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

Date of violation or assessment	Penalty
Violation occurring before Sept. 29, 1999	$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	11,000
Violation occurring after Nov. 2, 2016 and penalty assessed on or before Aug. 1, 2016	11,000

Date of violation or assessment	Penalty
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	18,936

(b) This remedy shall be in addition to any other remedy available under statutory or common law.

PART 2636—LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

■ 6. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996) and Sec. 701, Pub. L. 114–74 (Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 7. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than the amounts set forth below, as adjusted in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

Date of violation or assessment	Penalty
Violation occurring before Sept. 29, 1999	$10,000
Violation occurring between Sept. 29, 1999 and Nov. 2, 2015	11,000
Violation occurring after Nov. 2, 2015 and penalty assessed on or before Aug. 1, 2016	11,000
Violation occurring after Nov. 2, 2015 and penalty assessed after Aug. 1, 2016	18,936

* * * * *

[FR Doc. 2016–15193 Filed 6–27–16; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

Suspension of Supervision Fee Assessment Under the United States Grain Standards Act

AGENCY: Grain Inspection Packers and Stockyards Administration, USDA.

ACTION: Notification of suspension of supervision fee assessment.

SUMMARY: The Department of Agriculture (USDA), Grain Inspection, Packers and Stockyards Administration (GIPSA) is suspending the assessment of fees for supervision of official inspection and weighing services performed by delegated States and/or designated agencies under the United States Grain Standards Act (USGSA).

DATES: This document is effective beginning July 1, 2016, and remains in effect through June 30, 2017.

FOR FURTHER INFORMATION CONTACT: Barry Gomoll by phone at 202–720–8286 or by email at *Barry.L.Gomoll@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: The Agriculture Reauthorizations Act of 2015, Public Law 114–54, amended the USGSA (7 U.S.C. 71–87k) to require GIPSA to adjust fees for the supervision of official grain inspection and weighing in order to maintain an operating reserve of not less than 3 and not more than 6 months (7 U.S.C. 79(j)(4)).

GIPSA's reorganization efforts over the past 10 years have resulted in the centralization of supervision of delegated states and designated agencies. Due to this and other GIPSA cost reduction measures, the operating reserve of GIPSA's account for supervision of official inspection and weighing currently exceeds 6 months by a significant margin. Accordingly, GIPSA is issuing this document to announce the suspension of the fee for supervision of official inspection and weighing services of domestic grain and land carriers to Canada and Mexico performed by delegated States and/or designated agencies. According to the regulations under the USGSA, GIPSA may suspend any provision of the regulations in emergencies or other circumstances which would not impair the objectives of the USGSA (7 CFR 800.2). GIPSA has determined that suspending supervision fees will not impair the objectives of the USGSA because the operating reserve for supervision services is sufficient to maintain the service without additional funds.

GIPSA will no longer assess the fee of $0.011 per metric ton of domestic shipments officially inspected and/or weighed, including land carrier shipments to Canada and Mexico, performed by delegated States and/or designated agencies on or after July 1, 2016 (7 CFR 800.71 Schedule B). These fees will remain suspended for one year, at which time GIPSA will reassess the operating reserve for supervision of official agency inspection and weighing.

Official inspection agencies may no longer pass the suspended supervision fee on to their customers. Agencies which list GIPSA supervision fees as a line item on their fee schedules must eliminate the fee. Agencies which include supervision fees as a part of fees that they charge to their customers must either reduce fees by the amount of the suspended fee or provide justification and detailed cost information for retaining current fees. All agencies must submit revised fee schedules for GIPSA approval (7 CFR 800.70).

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2016–15152 Filed 6–27–16; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 820, 824, 851, 1013, 1017, and 1050

RIN 1990–AA46

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy ("DOE") publishes this interim final rule to adjust DOE's civil monetary penalties ("CMPs") for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as "the Act"). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective July 28, 2016. Written comments must be received by July 28, 2016.

ADDRESSES: You may submit comments, identified by RIN 1990–AA46, by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
2. *Email to GC–33EnergyRegs@hq.doe.gov.* Include RIN 1990–AA46 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.
3. *Mail:* Address written comments to U.S. Department of Energy, Office of the General Counsel, Room 6A–179, 1000 Independence Avenue SW., Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8078.

SUPPLEMENTARY INFORMATION:

I. Background
II. Method of Calculation
III. Summary of Interim Final Rule
IV. Interim Final Rulemaking
V. Regulatory Review

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note ("the Inflation Adjustment Act"), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Public Law 114–74) ("the 2015 Act"), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act requires agencies to adjust the level of CMPs with an initial "catch-up" adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation notwithstanding 5 U.S.C. 553. The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

Pursuant to the 2015 Act, OMB issued a guidance memorandum on the implementation of the 2015 Act.[1] This interim final rule is issued in accordance with applicable law and the OMB guidance memorandum.

II. Method of Calculation

The method of calculating CMP adjustments applied in this interim final rule is required by the 2015 Act. Under the 2015 Act, catch-up adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment, and the October 2015 CPI–U. Subsequent annual inflation adjustments are to be based on the percent change between the October CPI–U preceding the date of the adjustment, and the prior year's October CPI–U. Under the 2015 Act, any increase in CMP shall be rounded to the nearest multiple of $1.

III. Summary of the Interim Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment. The list also identifies the year the original maximum and/or minimum penalty level was established or last adjusted, excluding any previous adjustments made under the Inflation Adjustment Act. Finally, the list provides the CPI–U adjustment multiplier.

DOE Authority containing civil monetary penalty	Before adjustment	After adjustment	Year original maximum and/or minimum penalty level was established or last adjusted	CPI–U Adjustment multiplier
10 CFR 207.7	$4,000	$10,000	1974	4.65436
10 CFR 218.42	9,000	21,661	1975	4.33220
10 CFR 429.120	200	433	1975	4.33220
10 CFR 431.382	200	433	1975	4.33220
10 CFR 490.604	9,000	8,386	1992	1.67728
10 CFR 501.181	—40,000 —3.30/mcf —20/bbl	—88,613 —8/mcf —35/bbl	1978	3.54453
10 CFR 601.400 and App A	—minimum $15,000 —maximum $160,000	—minimum $18,936 —maximum $189,361	1989	1.89361
10 CFR 820.81	160,000	197,869	1988	1.97869
10 CFR 824.1 and App A	120,000	141,402	1999	1.41402
10 CFR 824.4 and App A	120,000	141,402	1999	1.41402
10 CFR 851.5 and App B	80,000	91,830	2002	1.31185
10 CFR 1013.3	9,000	10,781	1986	2.15628
10 CFR 1017.29	160,000	254,645	1981	2.54645
10 CFR 1050.303	9,000	19,305	1977	3.86101
50 U.S.C. 2731[2]	6,000	8,655	1991	1.73099

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[1] The guidance memorandum was issued on February 24, 2016, and references the adjustment multipliers and how to apply them.

[2] Implemented by 10 CFR 820.81, 10 CFR 851.5, and appendix B to 10 CFR part 851.

In addition to the above, 10 CFR 820.80 was updated to indicate that subpart G of part 820 implements the Inflation Adjustment Act as further amended by the 2015 Act. In Appendix A to part 820, Appendix A to part 824, and Appendix B to part 851, references to the statutory CMP limit were clarified to refer to the statutory CMP limit, as periodically adjusted for inflation. The authority citations for some CFR parts included in this CMP adjustment were also updated to include the statutory citation for the Act, as amended, 28 U.S.C. 2461 note.

IV. Interim Final Rulemaking

Section 4(b)(1)(A) of the Act states that, for the for the first adjustment made under the Act after the date of enactment of the 2015 Act [Nov. 2, 2015] the head of an agency shall adjust CMPs through an interim final rulemaking and the adjustment shall take effect not later than August 1, 2016. As this rulemaking is the first adjustment made under the 2015 Act after its enactment, DOE must issue it as an interim final rule with a specified effective date without regard to the procedural requirements applicable to rulemaking under the Administrative Procedure Act, 5 U.S.C. 553.

In addition, in accordance with 5 U.S.C. 553(b), the Administrative Procedure Act, DOE generally publishes a rule in a proposed form and solicits public comment on it before issuing the rule in final. However, 5 U.S.C. 553(b)(B) provides an exception to the public comment requirement if the agency finds good cause to omit advance notice and public participation. Good cause is shown when public comment is "impracticable, unnecessary, or contrary to the public interest."

DOE finds that providing an opportunity for public comment prior to publication of this rule is not necessary because DOE is carrying out a ministerial, non-discretionary duty specified in an Act of Congress. This interim final rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note requiring DOE to issue a regulation implementing catch-up inflation adjustments for all its civil penalty provisions. The formula for the amount of the penalty adjustment is prescribed by Congress. Prior notice and opportunity to comment are therefore unnecessary in this case because these changes are not subject to the exercise of discretion by DOE. These technical changes, required by law, do not substantively alter the existing regulatory framework nor in any way affect the terms under which DOE assesses civil penalties.

V. Regulatory Review

A. Executive Order 12866

This rule has been determined not to be a significant regulatory action under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. National Environmental Policy Act

DOE has determined that this interim final rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to a rulemaking that amends an existing rule or regulation and that does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment. As discussed above, the 2015 Act requires that the catch-up adjustment be done through an interim final rule, and DOE has determined that prior notice and opportunity for public comment is unnecessary. Because a notice of proposed rulemaking is not required for this action pursuant to 5 U.S.C. 553, or any other law, no regulatory flexibility analysis has been prepared for today's interim final rule.

D. Paperwork Reduction Act

This interim final rule imposes no new information collection requirements subject to the Paperwork Reduction Act.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires Federal agencies to examine closely the impacts of regulatory actions on State, local, and tribal governments. Section 201 excepts agencies from assessing effects on State, local or tribal governments or the private sector of rules that incorporate requirements specifically set forth in law. Because this rule incorporates requirements specifically set forth in 28 U.S.C. 2461 note, DOE is not required to assess its regulatory effects under Section 201. Unfunded Mandates Reform Act sections 202 and 205 do not apply to today's action because they apply only to rules for which a general notice of proposed rulemaking is published. Nevertheless, DOE has determined that today's regulatory action does not impose a Federal mandate on State, local, or tribal governments or on the public sector.

F. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

G. Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

I. Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This regulatory action would not have a significant adverse effect on the supply, distribution, or use of energy and is therefore not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

L. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this interim final rule.

List of Subjects

10 CFR Part 207

Administrative practice and procedure, Energy, Penalties.

10 CFR Part 218

Administrative practice and procedure, Penalties, Petroleum allocation.

10 CFR Part 429

Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

10 CFR Part 431

Administrative practices and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 490

Administrative practice and procedure, Energy conservation, Penalties.

10 CFR Part 501

Administrative practice and procedure, Electric power plants, Energy conservation, Natural gas, Petroleum.

10 CFR Part 601

Government contracts, Grant programs, Loan programs, Penalties.

10 CFR Part 820

Administrative practice and procedure, Government contracts, Penalties, Radiation protection.

10 CFR Part 824

Government contracts, Nuclear materials, Penalties, Security measures.

10 CFR Part 851

Civil penalty, Hazardous substances, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

10 CFR Part 1013

Administrative practice and procedure, Claims, Fraud, Penalties.

10 CFR Part 1017

Administrative practice and procedure, Government contracts, National Defense, Nuclear Energy, Penalties, Security measures.

10 CFR Part 1050

Decorations, medals, awards, Foreign relations, Government employees, Government property, Reporting and recordkeeping requirements.

Issued in Washington, DC, on June 21, 2016.

Steven Croley,
General Counsel.

For the reasons set forth in the preamble, DOE amends chapters II, III, and X of title 10 of the Code of Federal Regulations as set forth below.

PART 207—COLLECTION OF INFORMATION

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 15 U.S.C. 787 *et seq.;* 15 U.S.C. 791 *et seq.;* E.O. 11790, 39 FR 23185; 28 U.S.C. 2461 note.

■ 2. Section 207.7 is amended by revising the first sentence of paragraph (c)(1) to read as follows:

§ 207.7 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provision of this subpart or any order issued pursuant thereto shall be subject to a civil penalty of not more than $10,000 for each violation. * * *

* * * * *

PART 218—STANDBY MANDATORY INTERNATIONAL OIL ALLOCATION

■ 3. The authority citation for part 218 continues to read as follows:

Authority: 15 U.S.C. 751 *et seq.;* 15 U.S.C. 787 *et seq.;* 42 U.S.C. 6201 *et seq.;* 42 U.S.C. 7101 *et seq.;* E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 4. Section 218.42 is amended by revising paragraph (b)(1) to read as follows:

§ 218.42 Sanctions.

* * * * *

(b) * * * (1) Any person who violates any provision of this part 218 or any order issued pursuant thereto shall be subject to a civil penalty of not more than $21,661 for each violation.

* * * * *

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 5. The authority citation for part 429 is revised to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 6. Section 429.120 is amended by revising the first sentence to read as follows:

§ 429.120 Maximum civil penalty.

Any person who knowingly violates any provision of § 429.102(a) may be subject to assessment of a civil penalty of no more than $433 for each violation. * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 7. The authority citation for part 431 is revised to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 8. Section 431.382 is amended by revising paragraph (b) to read as follows:

§ 431.382 Prohibited acts.

* * * * *

(b) In accordance with sections 333 and 345 of the Act, any person who knowingly violates any provision of paragraph (a) of this section may be subject to assessment of a civil penalty of no more than $433 for each violation.

* * * * *

PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

■ 9. The authority citation for part 490 is revised to read as follows:

Authority: 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq;* 28 U.S.C. 2461 note.

■ 10. Section 490.604 is amended by revising paragraph (a) to read as follows:

§ 490.604 Penalties and Fines.

(a) *Civil Penalties.* Whoever violates § 490.603 of this part shall be subject to a civil penalty of not more than $8,386 for each violation.

* * * * *

PART 501—ADMINISTRATIVE PROCEDURES AND SANCTIONS

■ 11. The authority citation for part 501 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 42 U.S.C. 8301 *et seq.;* 42 U.S.C. 8701 *et seq.;* E.O. 12009, 42 FR 46267; 28 U.S.C. 2461 note.

■ 12. Section 501.181 is amended by revising paragraph (c)(1) to read as follows:

§ 501.181 Sanctions.

* * * * *

(c) * * * (1) Any person who violates any provisions of the Act (other than section 402) or any rule or order thereunder will be subject to the following civil penalty, which may not exceed $88,613 for each violation: Any person who operates a powerplant or major fuel burning installation under an exemption, during any 12-calendar-month period, in excess of that authorized in such exemption will be assessed a civil penalty of up to $8 for each MCF of natural gas or up to $35 for each barrel of oil used in excess of that authorized in the exemption.

* * * * *

PART 601—NEW RESTRICTIONS ON LOBBYING

■ 13. The authority citation for part 601 continues to read as follows:

Authority: 31 U.S.C. 1352; 42 U.S.C. 7254 and 7256; 31 U.S.C. 6301–6308; 28 U.S.C. 2461 note.

■ 14. Section 601.400 is amended by revising paragraphs (a), (b) and (e) to read as follows:

§ 601.400 Penalties.

(a) Any person who makes an expenditure prohibited herein shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such expenditure.

(b) Any person who fails to file or amend the disclosure form (see appendix B to this part) to be filed or amended if required herein, shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such failure.

* * * * *

(e) First offenders under paragraphs (a) or (b) of this section shall be subject to a civil penalty of $18,936, absent aggravating circumstances. Second and subsequent offenses by persons shall be subject to an appropriate civil penalty between $18,936 and $189,361, as determined by the agency head or his or her designee.

* * * * *

■ 15. Appendix A to part 601 is amended by:

■ a. Revising the last sentence of the second undesignated paragraph, in paragraph (3) of the section entitled, "Certification for Contracts, Grants, Loans, and Cooperative Agreements"; and

■ b. Revising the last sentence of the third undesignated paragraph, in the section entitled, "Statement for Loan Guarantees and Loan Insurance".

The revisions read as follows:

Appendix A to Part 601—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

* * * * *

(3) * * *

* * * Any person who fails to file the required certification shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such failure.

Statement for Loan Guarantees and Loan Insurance

* * * * *

* * * Any person who fails to file the required statement shall be subject to a civil penalty of not less than $18,936 and not more than $189,361 for each such failure.

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

■ 16. The authority citation for part 820 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282(a); 7191; 28 U.S.C. 2461 note; 50 U.S.C. 2410.

■ 17. Section 820.80 is amended by revising the first sentence to read as follows:

§ 820.80 Basis and purpose.

This subpart implements the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act) (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, section 31001) and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, section 701). 28 U.S.C. 2461 note. * * *

■ 18. Section 820.81 is amended by revising the first sentence to read as follows:

§ 820.81 Amount of penalty.

Any person subject to a penalty under 42 U.S.C. 2282a shall be subject to a civil penalty in an amount not to exceed $197,869 for each such violation. * * *

■ 19. Appendix A to part 820 is amended by:

■ a. Revising the fourth sentence of paragraph 2.e., "Civil Penalty," in section IX entitled "Enforcement Actions"; and

■ b. Revising paragraph a. in section XII entitled "Secretarial Notification and Consultation".

The revisions read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

IX. Enforcement Actions

* * * * *

2. Civil Penalty

* * * * *

e. * * * In no instance will a civil penalty for any one violation exceed the statutory limit, as periodically adjusted for inflation as required by law. * * *

* * * * *

XII. Secretarial Notification and Consultation

* * * * *

a. Proposals to impose civil penalties in an amount equal to or greater than the statutory limit, as periodically adjusted for inflation as required by law;

* * * * *

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

■ 20. The authority citation for part 824 is revised to read as follows:

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

■ 21. Section 824.1 is amended by revising the second sentence to read as follows:

§ 824.1 Purpose and scope.

* * * Subsection a. provides that any person who has entered into a contract or agreement with the Department of Energy, or a subcontract or subagreement thereto, and who violates (or whose employee violates) any applicable rule, regulation or order under the Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $141,402 for each violation. * * *

■ 22. Section 824.4 is amended by revising paragraph (c) to read as follows:

§ 824.4 Civil penalties.

* * * * *

(c) The Director may propose imposition of a civil penalty for violation of a requirement of a regulation or rule under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $141,402 for each violation.

* * * * *

■ 23. Appendix A to part 824 is amended by:

■ a. Revising the fourth and sixth sentences of paragraph 2.e., in section VIII entitled "Enforcement Actions"; and

■ b. Revising the last sentence of paragraph 3.d., "Adjustment Factors," in section VIII entitled "Enforcement Actions".

The revisions read as follows:

Appendix A to Part 824—General Statement of Enforcement Policy

* * * * *

VIII. Enforcement Actions

* * * * *

2. Civil Penalty

* * * * *

e. * * * In no instance will a civil penalty for any one violation exceed the statutory limit, as periodically adjusted for inflation as required by law, per violation. * * * Thus, the per violation cap will not shield a DOE contractor that is or should have been aware of an ongoing violation and has not reported it to DOE and taken corrective action despite an opportunity to do so from liability significantly exceeding the limit. * * *

* * * * *

3. Adjustment Factors

* * * * *

d. * * * Based on the degree of such factors, DOE may escalate the amount of civil penalties up to the statutory maximum, as periodically adjusted for inflation as required by law, per violation per day for continuing violations.

* * * * *

PART 851—WORKER SAFETY AND HEALTH PROGRAM

■ 24. The authority citation for part 851 is revised to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; 28 U.S.C. 2461 note.

■ 25. Section 851.5 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 851.5 Enforcement.

(a) A contractor that is indemnified under section 170d. of the AEA (or any subcontractor or supplier thereto) and that violates (or whose employee violates) any requirement of this part shall be subject to a civil penalty of up to $91,830 for each such violation. * * *

* * * * *

■ 26. Appendix B to part 851 is amended by:

■ a. Revising the last sentences of paragraphs (b)(1) and (2) in section VI;

■ b. Revising paragraph 1.(e)(1) in section IX ; and

■ c. Revising the fourth sentence in paragraph 2.(f) in section IX.

The revisions read as follows:

Appendix B to Part 851—General Statement of Enforcement Policy

* * * * *

VI. Severity of Violations

(b) * * *

(1) * * * A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $91,830.

(2) * * * A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($45,915).

* * * * *

IX. Enforcement Actions

* * * * *

1. Notice of Violation

* * * * *

(e) * * *

(1) DOE may assess civil penalties of up to $91,830 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). *See* 10 CFR 851.5(a).

* * * * *

2. Civil Penalty

* * * * *

(f) * * * In no instance will a civil penalty for any one violation exceed the statutory limit, as periodically adjusted for inflation as required by law, per day. * * *

* * * * *

PART 1013—PROGRAM FRAUD CIVIL REMEDIES AND PROCEDURES

■ 27. The authority citation for part 1013 continues to reads as follows:

Authority: 31 U.S.C. 3801–3812; 28 U.S.C. 2461 note.

■ 28. Section 1013.3 is amended by revising paragraphs (a)(1)(iv) and (b)(1)(ii) to read as follows:

§ 1013.3 Basis for civil penalties and assessments.

(a) * * *

(1) * * *

(iv) Is for payment for the provision of property or services which the person has not provided as claimed, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,781 for each such claim.

* * * * *

(b) * * *

(1) * * *

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $10,781 for each such statement.

* * * * *

PART 1017—IDENTIFICATION AND PROTECTION OF UNCLASSIFIED CONTROLLED NUCLEAR INFORMATION

■ 29. The authority citation for part 1017 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.;* 42 U.S.C. 2168; 28 U.S.C. 2461 note.

■ 30. Section 1017.29 is amended by revising paragraph (c) to read as follows:

§ 1017.29 Civil penalty.

* * * * *

(c) *Amount of penalty.* The Director may propose imposition of a civil penalty for violation of a requirement of a regulation under paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $254,645 for each violation.

* * * * *

PART 1050—FOREIGN GIFTS AND DECORATIONS

■ 31. The authority citation for part 1050 continues to read as follows:

Authority: The Constitution of the United States, Article I, Section 9; 5 U.S.C. 7342; 22 U.S.C. 2694; 42 U.S.C. 7254 and 7262; 28 U.S.C. 2461 note.

■ 32. Section 1050.303 is amended by revising the last sentence in paragraph (d) to read as follows:

§ 1050.303 Enforcement.

* * * * *

(d) * * * The court in which such action is brought may assess a civil penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $19,305.

[FR Doc. 2016–15148 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–6033; Directorate Identifier 2015–SW–019–AD; Amendment 39–18571; AD 2016–13–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Airbus Helicopters Model AS 365 N3 helicopters. This AD requires inspecting the cabin and cockpit for labels, placards, or markings that provide jettison procedure instructions for cabin doors, removing any labels, placards, or markings that are in an incorrect location, and installing placards where they are missing. This AD is prompted by the determination that placards had not been installed according to specifications on newly manufactured helicopters. The actions are intended to provide exit procedures during an emergency.

DATES: This AD is effective August 2, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of August 2, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6033.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–6033; or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (EASA) AD, any incorporated-by-reference service information, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations Office, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *david.hatfield@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 11, 2016, at 81 FR 12836, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 by adding an AD that would apply to Airbus Helicopters Model AS 365 N3 helicopters. The NPRM proposed to require inspecting the cabin and cockpit for labels, placards, or markings that provide jettison procedure instructions for cabin doors, removing any labels, placards, or markings that are in an incorrect location, and installing placards in the correct locations. The proposed requirements were intended to provide exit procedures during an emergency.

The NPRM was prompted by AD No. 2015–0068–E, dated April 29, 2015, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for the Airbus Helicopters Model AS 365 N3 helicopters without external life rafts installed, except those helicopters modified in accordance with Airbus Helicopters modification (MOD) 0711B68, and Model AS 365 N3 helicopters with external life rafts installed, except those helicopters modified in accordance Airbus Helicopters MOD 0711B67 and MOD 0711B68. EASA advises that during helicopter delivery after manufacturing, Airbus Helicopters identified that placards providing jettison procedure instructions for the cabin doors were not systematically installed or not installed in a proper location. This condition, if not corrected, could prevent the timely evacuation of the helicopter during an emergency. The EASA AD consequently requires determining whether any placards are missing or incorrectly located, installing any missing placards, and replacing any incorrectly located placards.

Comments

We gave the public the opportunity to participate in developing this AD, but we received no comments on the NPRM (81 FR 12836, March 11, 2016).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of this same type design and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

The EASA AD requires compliance within 14 days after the effective date of the EASA AD. This AD requires compliance within 50 hours time-in-service.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Helicopters Alert Service Bulletin No. AS365–11.00.02, Revision 2, dated April 23, 2015 (ASB). The service information describes procedures for replacing and installing cabin internal evacuation markings. The ASB reports that deviations in the locations of the cabin internal evacuation markings and missing markings were noted during the delivery of new helicopters. The ASB provides instructions about the locations of, characteristics of, and information contained in the markings.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 15 helicopters of U.S. Registry and that labor costs average $85 a work-hour. Based on these estimates, we expect that inspecting the helicopter to determine the proper location and presence of cabin door jettison procedure placards and replacing and installing them requires 4 work-hours and that parts cost $70. We estimate a total cost of $410 per helicopter, and $6,150 for the U.S. fleet.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on helicopters identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–13–07 Airbus Helicopters: Amendment 39–18571; Docket No. FAA–2015–6033; Directorate Identifier 2015–SW–019–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS 365 N3 helicopters, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as missing or incorrectly located information for exiting a helicopter. This condition could result in failure to jettison cabin doors during an emergency, resulting in death or injury of helicopter occupants.

(c) Effective Date

This AD becomes effective August 2, 2016.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within 50 hours time-in-service:

(1) Inspect the cabin and cockpit for labels, placards, and markings that provide jettison procedure instructions for cabin doors.

(2) For the left and right side, remove any existing label, placard, and marking and install placards in accordance with the Accomplishment Instructions, paragraph 3.B.2 and Figures 1 through 6, of Airbus Helicopters Alert Service Bulletin No. AS365–11.00.02, Revision 2, dated April 23, 2015.

(f) Credit for Previously Completed Actions

Actions accomplished before the effective date of this AD in accordance with Airbus Helicopters Modification (MOD) 0711B68 for helicopters without external life rafts or MOD 0711B68 and MOD 0711B67 for helicopters with external life rafts are considered acceptable for compliance with this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: David Hatfield, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

The subject of this AD is addressed in the European Aviation Safety Agency (EASA) AD No. 2015–0068–E, dated April 29, 2015. You may view the EASA AD on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2015–6033.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 1100, Placards and Markings.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Airbus Helicopters Alert Service Bulletin No. AS365–11.00.02, Revision 2, dated April 23, 2015.

(ii) Reserved.

(3) For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on June 17, 2016.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2016–14972 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2015–3994; Airspace Docket No. 15–ANM–23]

Establishment of Class E Airspace, Shelton, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface at Sanderson Field Airport, Shelton, WA, to accommodate new Standard Instrument Approach Procedures developed for the airport. Controlled airspace is necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, September 15, 2016. The Director of the Federal Register approves this incorporation by reference action under Title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–366–9826. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tom Clark, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4511.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Sanderson Field Airport, Shelton, WA.

History

On January 28, 2016, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Sanderson Field Airport, Shelton, WA (81 FR 4903) Docket FAA–2015–3994. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received from Joseph Murphy, supporting the proposal.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface within a 4-mile radius of the Sanderson Field Airport, Shelton WA, and that airspace within 1.5 miles either side of the airport 068° bearing extending from the 4-mile radius to 5 miles northeast of the airport, and that airspace within 2.3 miles either side of the airport 248° bearing extending from the 4-mile radius to 9.5 miles southwest of the airport. This airspace is established to accommodate new Standard Instrument Approach Procedures developed for the safety and management of Instrument Flight Rules (IFR) operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures," paragraph 5–6.5a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM WA E5 Shelton, WA [New]

Sanderson Field Airport, WA
(Lat. 47°14′01″ N., long. 123°08′51″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of Sanderson Field Airport, and that airspace 1.5 miles either side of the 068° bearing from airport extending from the 4-mile radius to 5 miles northeast of the airport, and that airspace 2.3 miles either side of the 248° bearing from airport extending from the 4-mile radius to 9.5 miles southwest of the airport.

Issued in Seattle, Washington, on June 17, 2016.

Brian J. Johnson,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–15184 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 160106014–6530–03]

RIN 0694–AG82

Temporary General License: Extension of Validity

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On March 24, 2016, the Bureau of Industry and Security (BIS) published a final rule, Temporary General License. The March 24 final rule created a temporary general license that restored, for a specified time period, the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) as of March 7, 2016, to two entities (ZTE Corporation and ZTE Kangxun) that were added to the Entity List on March 8, 2016. At this time, the U.S. Government has decided to extend the temporary general license until August 30, 2016. In order to implement this decision, this final rule revises the temporary general license to remove the expiration date of June 30, 2016, and to substitute the date of August 30, 2016. This final rule makes no other changes to the EAR.

DATES: This rule is effective June 28, 2016 through August 30, 2016. The expiration date of the final rule published on March 24, 2016 (81 FR 15633) is extended until August 30, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2016, the Bureau of Industry and Security (BIS) published a final rule, Temporary General License (81 FR 15633). The March 24 final rule amended the EAR by adding Supplement No. 7 to part 744 to create a Temporary General License that returned, until June 30, 2016, the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun to that which were in effect prior to their addition to the Entity List on March 8, 2016. Details regarding the scope of the listing are at 81 FR 12004 (Mar. 8, 2016), ("Additions to the Entity List"). Details regarding the Temporary General License can be found in the March 24 final rule and in Supplement No. 7 to Part 744—Temporary General License.

BIS issued the March 24 final rule in connection with a request to remove or modify the listing. The March 24 final rule specified that the temporary general license was renewable if the U.S. Government determined, in its sole discretion, that ZTE Corporation and ZTE Kangxun were timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter which led to the two entities' listing.

At this time, the U.S. Government has decided to extend the temporary general license until August 30, 2016. In order to implement this U.S. Government decision, this final rule revises the temporary general license to remove the date June 30, 2016, and substitute the date of August 30, 2016. This final rule makes no other changes to the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). If this rule were delayed to allow for notice and comment and a delay in effective date, then the national security and foreign policy objectives of this rule would be harmed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016).

Supplement No. 7 to Part 744—[AMENDED]

■ 2. In Supplement No. 7 to part 744, remove "June 30, 2016" and add in its place "August 30, 2016".

Dated: June 23, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–15228 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9770]

RIN 1545–BN39

Certain Transfers of Property to Regulated Investment Companies [RICs] and Real Estate Investment Trusts [REITs]; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations; correcting amendment.

SUMMARY: This document contains a correction to final and temporary regulations (TD 9770) that were published in the **Federal Register** on June 8, 2016 (81 FR 36793). The final and temporary regulations effect the repeal of the *General Utilities* doctrine by the Tax Reform Act of 1986 and prevent abuse of the Protecting Americans from Tax Hikes Act of 2015. The temporary regulations impose corporate level tax on certain transactions in which property of a C corporation becomes the property of a REIT.

DATES: This correction is effective on June 28, 2016 and applicable on June 8, 2016.

FOR FURTHER INFORMATION CONTACT: Austin M. Diamond-Jones at (202) 317–5085 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations (TD 9770) that are the subject of this correction are under section 337(d) of the Internal Revenue Code.

Need for Correction

As published, the final and temporary regulations (TD 9770) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.337(d)–7T is amended by revising paragraph (f)(3)(iii) to read as follows:

§ 1.337(d)–7T Tax on property owned by a C corporation that becomes property of a RIC or REIT.

* * * * *

(f) * * *

(3) * * *

(iii) The related section 355 distribution occurred before December 7, 2015 or is described in a ruling request referred to in section 311(c) of Division Q of the Consolidated Appropriations Act, 2016, Public Law 114–113, 129 Stat. 2422.

* * * * *

Martin V. Franks,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2016–15264 Filed 6–27–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2016–0010; 16XE1700DX EX1SF0000.DAQ000 EEEE50000]

RIN 1014–AA30

Civil Penalty Inflation Adjustment

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Interim final rule.

SUMMARY: This rule adjusts the level of the civil monetary penalty contained in the Bureau of Safety and Environmental Enforcement (BSEE) regulations pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, and Office of Management and Budget (OMB) guidance.

DATES: This rule is effective on July 28, 2016. Comments will be accepted until August 29, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. [BSEE–2016–0010] and follow the instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* David Fish, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: David Fish, Acting Chief Safety and Enforcement Division, Bureau of Safety and Environmental Enforcement, (202) 208–3955 or by email: *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Calculation of Adjustment
III. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation With Indian Tribes (E.O. 13175 and Departmental policy)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)
  L. Clarity of This Regulation
  M. Administrative Procedure Act

I. Background

The Outer Continental Shelf Lands Act (OCSLA) directs the Secretary of the Interior to adjust the OCSLA maximum civil penalty amount at least once every three years to reflect any increase in the Consumer Price Index (CPI) to account for inflation. (43 U.S.C. § 1350(b)(1). The Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 104–410) (FCPIA of 1990) required that all civil monetary penalties, including the OCSLA maximum civil penalty amount, be adjusted at least once every 4 years. Pursuant to OCSLA and the FCPIA of 1990, the OCSLA maximum civil penalty amount was last adjusted in 2011. (76 FR 38294, June 30, 2011). In 2014 and 2015, BSEE performed computations to determine if it should increase the current OCSLA maximum civil penalty amount to account for inflation. After running the computations, BSEE determined that adjustments of the OCSLA maximum civil penalty amount were not warranted in 2014 and 2015.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law 114–74) (FCPIA of 2015). The FCPIA of 2015 requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment, if warranted, through rulemaking, and then to make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Pursuant to OCSLA and the FCPIA of 2015, this rule adjusts the following maximum civil monetary penalty per day per violation:

CFR citation	Description of the penalty	Current maximum penalty	Multiplier	Adjusted maximum penalty
30 CFR 250.1403	Failure to comply per day	$40,000	1.05042	$42,017

II. Calculation of Adjustment

The OMB issued guidance on calculating the civil monetary penalty adjustments pursuant to the FCPIA of 2015. (February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.*) Under this guidance, the Department of the Interior has identified applicable civil monetary penalties and calculated the necessary adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review activities. The calculated adjustment is based on the percent change between the CPI for all Urban Consumers for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI.

For 2016, OCSLA and the FCPIA of 2015 required that BSEE adjust the OCSLA maximum civil penalty amount and provide for timing of the adjustment. In computing the new OCSLA maximum civil penalty amount, since BSEE last adjusted that amount in 2011, BSEE divided the October 2015 CPI by the October 2011 CPI (237.8/226.4). This resulted in a multiplying factor of 1.05042. The existing maximum civil penalty amount ($40,000) was then multiplied by the multiplying factor (40,000 × 1.05042 = 42,016.8). The FCPIA of 2015 requires that the OCSLA maximum civil penalty amount be rounded to the nearest $1.00 at the end of the calculation process. Accordingly, the adjusted OCSLA maximum civil penalty is $42,017. This new OCSLA maximum civil penalty amount does not exceed 150 percent of the OCSLA maximum civil penalty amount as of November 2, 2015, as stipulated by the FCPIA of 2015. Also, pursuant to the FCPIA of 2015, the increase in the OCSLA maximum civil penalty amount applies to civil penalties assessed after the date the increase takes effect, even when the associated violation(s) predate such increase.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order (E.O) 12866 provides that the Office of Information and Regulatory Affairs in the OMB will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. (See 5 U.S.C 603 (a) and 604 (a).) The Federal Civil Penalties Adjustment Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Will not have an annual effect on the economy of $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule will not affect a taking of private property or otherwise have takings implications under E.O. 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy, under Departmental Manual Part 512 Chapters 4 and 5, and under the criteria in E.O. 13175, and have determined that it has no substantial direct effects on federally recognized Indian tribes and that, consultation under the Department of the Interior's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion (see 43 CFR 46.210(i).) This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by E.O.s 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use common, everyday words and clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The FCPIA of 2015 requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties of no later than August 1, 2016. To comply with the FCPIA of 2015, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. The Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for prior public comment (5 U.S.C. 553(b).) BSEE finds that there is good cause to promulgate this rule without first providing the public comment. It would not be possible to meet the deadlines imposed by the FCPIA of 2015 if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, BSEE is promulgating this interim final rule to implement the statutory directive in the FCPIA of 2015, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying a specified formula. BSEE has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters, so notice and comment is unnecessary. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule.

Thus, BSEE finds pre-promulgation notice and public comment to be impracticable and unnecessary.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulfur.

For the reasons given in the preamble, the Bureau of Safety and Environmental Enforcement amends Title 30, Chapter II, Subchapter B, Part 250 Code of Federal Regulations as follows.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for 30 CFR part 250 is revised to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334 and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Revise § 250.1403 to read as follows:

§ 250.1403 What is the maximum civil penalty?

The maximum civil penalty is $42,017 per day per violation.

Janice M. Schneider,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2016–15157 Filed 6–27–16; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 88

[Docket ID: DOD–2013–OS–0236]

RIN 0790–AJ17

Transition Assistance Program (TAP) for Military Personnel

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Final rule.

SUMMARY: This rule establishes policy, assigns responsibilities, and prescribes procedures for administration of the DoD Transition Assistance Program (TAP). The goal of TAP is to prepare all eligible members of the Military Services for a transition to civilian life, including preparing them to meet Career Readiness Standards (CRS). The TAP provides information and training to ensure Service members leaving Active Duty and eligible Reserve Component Service members being released from active duty are prepared for their next step in life whether pursuing additional education, finding a job in the public or private sector, starting their own business or other form of self-employment, or returning to school or an existing job. Service members receive training to meet CRS through the Transition GPS (Goals, Plans, Success) curricula, including a core curricula and individual tracks focused on Accessing Higher Education, Career Technical Training, and Entrepreneurship.

All Service members who are separating, retiring, or being released from a period of 180 days or more of continuous Active Duty must complete all mandatory requirements of the Veterans Opportunity to Work (VOW) Act, which includes pre-separation counseling to develop an Individual Transition Plan (ITP) and identify their career planning needs; attend the Department of Veterans Affairs (VA) Benefits Briefings I and II to understand what VA benefits the Service member earned, how to apply for them, and leverage them for a positive economic outcome; and attend the Department of Labor Employment Workshop (DOLEW), which focuses on the mechanics of resume writing, networking, job search skills, interview skills, and labor market research.

DATES: *Effective date:* This rule is effective September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ron Horne, 703–614–8631.

SUPPLEMENTARY INFORMATION:

The TAP prepares all eligible members of the Military Services for a transition to civilian life; enables eligible Service members to meet the CRS as required by this rule; and is the overarching program that provides transition assistance, information, training, and services to eligible transitioning Service members to prepare them to be career ready when they transition back to civilian life.

Spouses of eligible Service members are entitled to the DOLEW, job placement counseling, DoD/VA-administered survivor information, financial planning assistance, transition plan assistance, VA-administered home loan services, housing assistance benefits information, and counseling on responsible borrowing practices. Dependents of eligible Service members are entitled to career change counseling and information on suicide prevention.

These revisions will:

- Institutionalize the implementation of the VOW Act of 2011,
- require mandatory participation in the Department of Labor (DOL) Employment Workshop (EW),
- implement the Transition GPS (Goals, Plans, Success) curriculum,
- require development of an Individual Transition Plan (ITP),
- enhance tracking of attendance at TAP events,
- implement of mandatory Career Readiness Standards (CRS) for separating Service members, and
- incorporate a CAPSTONE event to document transition readiness and reinforce Commanding Officer accountability and support for the needs of individual Service members.

This rule improves the process of conducting transition services for eligible separating Service members across the Military Services and establishes the data collection foundation to build short-, medium-, and long-term program outcomes.

In August 2011, President Obama announced his comprehensive plan to ensure that all of America's Post 9/11 Veterans have the support they need and deserve when they leave the military, look for a job, and enter the civilian workforce. A key part of the

President's plan was his call for a "career-ready military." Specifically, he directed DoD and Department of Veterans Affairs (VA) to work closely with other federal agencies and the President's economic and domestic policy teams to lead a Veterans Employment Initiative Task Force to develop a new training and services delivery model to help strengthen the transition readiness of Service members from military to civilian life. Shortly thereafter, Congress passed and the President signed the "VOW to Hire Heroes Act of 2011," Public Law 112–56, 201–265, 125 Stat. 715 ("VOW Act"), which included steps to improve the existing TAP for Service members. Among other things, the "VOW Act" made participation in several components of TAP mandatory for all Service members (except in certain limited circumstances).

The task force delivered its initial recommendations to the President in December 2011, which required implementation of procedures to document Service member participation, and to demonstrate Military Service compliance with 10 U.S.C. Chapter 58 requirements. The Veterans Opportunity to Work (VOW) Act of 2011 mandated transitioning Service members participation in receiving counseling and training on VA Benefits. VA developed VA Benefits I and II Briefings to meet this mandate. The VOW Act also mandated transitioning Service members to received counseling and informed of services regarding employment assistance. The Department of Labor revised its' curriculum to meet this mandate with the Department of Labor Employment Workshop. The VOW requirements have been codified in 10 U.S.C. Chapter 58 and attendance at all Transition GPS curricula is now documented.

The redesigned TAP was developed around four core recommendations:

Adopt standards of career readiness for transitioning Service members. Service members should leave the military having met clearly defined standards of career readiness.

Implement a revamped TAP curriculum. Service members should be provided with a set of value-added, individually tailored training programs and services to equip them with the set of tools they need to pursue their post-military goals successfully.

Implement a "CAPSTONE". Service members should be afforded the opportunity, shortly before they depart the military, to review and verify that they have met the CRS and received the services they desire and to be steered to the resources and benefits available to them as Veterans.

Implement a "Military Life Cycle" (MLC) transition model. Transition preparation for Service members should occur over the entire span of their military careers—not just in the last few months of their military service.

Implementation of these recommendations transforms a Service member' experience during separating, retiring, demobilizing, or deactivating to make the most informed career decisions by equipping them with the tools they need to make a successful transition.

The rule discusses a redesigned program which implements, the transition-related provisions of the "VOW Act" and recommendations of the Task Force to offer a tailored curriculum providing Service members with useful and quality instruction with connections to the benefits and resources available to them as Veterans. At the heart of the redesign is the new set of CRS. Just as Service members must meet military mission readiness standards while on Active Duty, Service members will meet CRS before their transition to civilian life.

Regulatory Impact Analysis

As part of the regulatory process, DOD is required to develop a regulatory impact analysis (RIA) for rules with costs or benefits exceeding $100M annually. DOD estimates implementation of this final rule for the Department will have a cost of approximately $100M annually starting in 2016. DoD assumes that the annual outlays will continue.

I. Alternatives Analysis

In President Obama's speech in August of 2011 at the Washington Navy Yard, he used the term 'Reverse Boot Camp' to demonstrate his vision for a redesigned TAP to increase the preparedness of Service members to successfully transition from military service to civilian communities. The President's speech initiated an interagency discussion on an approach to mirror the Military Services' "basic or initial entry training" programs. This approach would require the Military Services to devote approximately 9 to 13 weeks, depending on curriculum development, outcome measures, assessments and individual military readiness and cultural differences, to afford Service members the opportunity to use all aspects of a rigorous transition preparation program.

While no cost estimates were conducted, this approach was deemed to be both expensive and potentially jeopardize DoD's ability to maintain mission readiness. Approximately 200,000–250,000 Service members leave DoD each year. To concentrate on transition preparation during the last 9 to 13 weeks of an individual's military career would not be workable since mission readiness could not absorb the impact of the void. Additionally, there would be an increased expense required to activate or mobilize Reserve Component or National Guard personnel for the nine to 13 weeks prior to transition. Finally, logistical challenges could result from Service members dealing with TAP requirements while deployed. For example, units scheduled to mobilize would be delayed because a returning unit could occupy facilities (such as billeting, classrooms, and training areas) that the deploying units needed to train and prepare for mobilization.

A second alternative considered was establishment of regional residential transition centers staffed by personnel from all Military Services, the Departments of VA, Labor (DOL), and Homeland Security (U.S. Coast Guard), the U.S. Small Business Administration (SBA), and the OPM. Transitioning Service members would be sent on temporary duty for a period of four to six weeks, 12 months prior to their separation or retirement date to receive transition services. Eligible Reserve Component Service members would be assigned to the centers as a continuation of their demobilization out-processing. The potential costs to build or modify existing facilities, or rent facilities that would meet regional residential transition center requirements, as well as costs for Service member travel to and from the regional centers, reduced the viability of this approach.

A third, less expensive option would have left the existing TAP program intact without increasing counselor and curriculum facilitation resources. This option would not have accountability systems and procedures to demonstrate compliance with the "VOW Act" that mandates preseparation counseling, attendance at the DOL's three day Employment Workshop (DOLEW), and attendance at two VA briefings. Due to increasing Veteran unemployment and homeless percentages at the time of the decision, and the rebalancing of the military force, this cost neutral approach would not have the outcome-based capability intended to develop career ready skills in transitioning Service members. This option, which would not have met the requirements of the law, would cost the Military Services approximately $70M versus the fiscal year 2013 (FY13) $122M for the implementation of the re-designed TAP.

II. Anticipated Costs and Benefits

The "VOW Act" mandated preseparation counseling, VA Benefits Briefings I and II, and the DOLEW, and these components were implemented on November 21, 2012. On the same day, the "VOW Act" requirements became mandatory; DoD published a policy to make CRS and Commanding Officer verification that Service members are meeting CRS, mandatory. "Vow Act" compliance and CRS must be met by all Service members after they have served 180 days in active duty status. Service members must attend Transition GPS (Goals, Plans, Success) curriculum modules that build career readiness if they cannot meet the CRS on their own. In cases where Service members receive a punitive or Under Other Than Honorable Conditions discharge, Commanding Officers have the discretion of determining participation in the other than mandatory Transition GPS curricula. By policy, all Service members who do not meet the CRS will receive a warm handover to DOL, VA, or other resources targeted at improving career readiness in the area where the standard was not met.

The entire Transition GPS curriculum is now available online through Joint Knowledge Online (JKO); however, Service members must attend preseparation counseling, VA briefings, and the DOLEW in person. All other curricula can be accessed through the JKO virtual platform. The virtual curriculum (VC) was launched at the beginning of FY14. DoD expected a cost savings in FY14 due to use of the VC but the cost avoidance cannot be calculated, as VC utilization is appropriate on a Service member-by-Service member basis.

Further, resource requirements for DoD become more predictable when transition assistance is provided at pre-determined points throughout the MLC TAP model, mitigating the impacts of "surge" periods when large numbers of Service members separate, demobilize or deactivate.

The FY13 cost to DoD to implement the TAP redesign was $122M and in FY14 DoD costs were $85M. The difference is attributed to both implementation costs of the updated program in FY13 and to efficiencies discovered as implementation was completed throughout FY14. These costs represent only the portion of the interagency program that is paid by the DoD. The cost covers Defense civilian and contracted staff (FTEs) salaries and benefits at 206 worldwide locations. Civilian and contract labor account for approximately 88% of total program costs in both fiscal years. The remaining costs include equipment, computers (purchase, maintenance and operations), Information Technology (IT) and architecture, data collection and sharing, Web site development, performance evaluation and assessments, curriculum development and modifications, materials (audio-visual, CDs, eNotebooks, handouts, interactive brick and mortar classroom sessions, virtual curriculum, etc.), facilitation training, research, studies, and surveys. Within DoD, the re-designed TAP capitalized upon existing resources, *e.g.*, use of certified financial planners housed in the Military Services' family centers to conduct financial planning or military education counselors used to conduct the Accessing Higher Education (AHE) track. Other efficiencies include reuse or upgrades to current facilities and classrooms used to deliver legacy TAP. Implementation costs in FY13 included equipping classrooms to allow individual internet access and train-the-trainer workshops to deliver the DoD portions of the Transition GPS curriculum. Examples of efficiencies discovered in FY14 include providing train-the-trainer courses through webinars and savings associated with Service members using the VC.

The DoD provides military spouses the statutory requirements of TAP as prescribed in Title 10, United States Code. Other elements of TAP, prescribed by DoD policy, are available to spouses if resources and space permits. Military spouses can attend the "brick and mortar" Transition GPS curriculum at no cost on a nearby military installation. They can also take the entire Transition GPS curriculum online, virtually, at any time, from anywhere with a computer or laptop for free.

Many Veteran and Military Service Organizations, employers, and local communities provide transition support services to local installations. Installation commanders are strongly encouraged to permit access to Veteran Service Organizations (VSOs) and Military Service Organizations (MSOs) to provide transition assistance-related events and activities in the United States and abroad at no cost to the government. Two memos signed by Secretary of Defense Chuck Hagel reinforce such access. The memos are effective within 60 days of the December 23 signing, and will remain in effect until the changes are codified within DoD.[1] Access to installations is for the purpose of assisting Service members with their post-military disability process and transition resources and services. The costs to VSOs and MSOs would be any costs associated with salaries for paid VSO and MSO personnel. These organizations will pay for any costs associated with travel to and from military installations, as well as any materials they provide to separating Service members and their spouses. Costs to employers and community organizations supporting transition-related events and activities would be similar to those for VSOs and MSOs.

The DoD is dependent upon other federal agencies to deliver the redesigned TAP to transitioning Service members. The VA, DOL, SBA, Department of Education (ED), and Office of Personnel Management (OPM) have proven to be invaluable partners in supporting the Transition GPS curriculum development and delivery, and in providing follow-on services required by a warm handover due to unmet CRS. These interagency partners strongly support TAP governance and performance measurement.

Although DoD cannot estimate the costs for its interagency partners, TAP provides the Service members with resources through the contributions of its interagency partners that should be identified as factors of total program cost. Transition assistance is a comprehensive interagency effort with contributions from every partner leveraged to provide support to the All-Volunteer Force as the Service members prepare to become Veterans. The interagency partners deliver the Transition GPS curriculum and one-on-one services across 206 military installations across the globe. DoD can only speak to TAP costs within the Defense fence line, but can discuss the value provided by interagency partners.

The DOL provides skilled facilitators that deliver the DOLEW, a mandatory element of the Transition GPS standardized curriculum. DOL's American Jobs Centers (AJCs) provide integral employment support to transitioning Service members and transitioned Veterans. The AJCs are identified as resources for the Service members during TAP, which may increase visits from the informed Service members. The AJCs also support warm handovers of Service members who have identified employment as a transition goal on their ITP but do not meet the CRS for employment. DOL also provides input to the TAP interagency working groups and governance boards, and is involved in the data collection, performance measurement, and standardization efforts, all of which represent costs to the organization.

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[1] DoD Memos signed 12/23/2014. "Installation Access and Support Services to VA-Recognized Veteran Service Organizations/Military Service Organizations" and "Installation Access and Support Services for Nonprofit Non-Federal Entities".

The SBA provides the Transition GPS entrepreneurship track, Boots to Business, to educate transitioning Service members interested in starting their own business about the challenges small businesses face. Upon completing the Boots to Business track, the SBA allows Service members to access the SBA on-line entrepreneurship course, free of charge. The SBA then provides Service members the opportunity to be matched to a successful businessperson as a mentor. This is a tremendous commitment that must create additional costs for the SBA. The SBA offices continue to provide support to Veterans as they pursue business plan development or start up loans; provision of this support is in the SBA's statutory charter, but the increased awareness provided through the Transition GPS curriculum is likely to increase the patronage and represent a cost to SBA. The SBA also provides input to the TAP interagency working groups and governance boards. The SBA is engaged with data collection and sharing efforts to determine program outcomes.

VA provides facilitators who deliver the mandatory VA Benefits Briefings I and II as part of the Transition GPS standardized curriculum required to meet "VOW Act" requirements. The VA facilitators also deliver the two-day track for Career Technical Training that provides instruction to Service members to discern the best choices of career technical training institutions, financial aid, best use of the Post 9/11 GI Bill. Benefits counselors deliver one-on-one benefits counseling on installations, as space permits. As a primary resource for Veterans, VA ensures benefits counselors are able to accept warm handovers of transitioning Service members who do not meet CRS and require VA assistance post-separation. The VA hosts a web portal for connectivity between employers and transitioning Service members, Veterans and their families. VA provides input to the TAP interagency working groups and governance boards, and is involved in the data collection and sharing efforts to determine program outcomes, all of which represent costs to the organization.

ED serves a unique and highly valued role in the interagency partnership by ensuring the entire curriculum, both in classroom and virtual platform delivery, is based on adult learning principles. Their consultative role, tapped daily by the interagency partners, is critical to a quality TAP. ED also provides input to the TAP interagency working groups and governance boards and keeps a keen eye toward meaningful TAP outcomes, all of which represent costs to the organization.

The OPM contributes federal employment information and resources to the DOLEW, and enables the connectivity between the VA's web portal and USA Jobs Web sites. The OPM also provides input to the TAP interagency working groups and governance boards and contributes to performance measures.

The costs to DoD's interagency partners were not calculated; implementation of this rule was mandated by the "Vow Act" and costs for all parties are already incurred. The calculated costs to DoD and unmeasured costs to DoD's interagency partners provide significant resources to Service members, resulting in benefits to the Nation.

The benefit of the redesigned TAP to the Service member is increased career readiness to obtain employment, start their own business, or enter career technical training or an institution of higher learning at the point of separation from military service. The legacy, end-of-career TAP is replaced by pre-determined opportunities across the MLC for many transition-related activities to be completed during the normal course of business. Since a direct economic estimate of the value of TAP is difficult for DoD to demonstrate as it would require collection of information from military personnel after they become private citizens, the value of the TAP can be derived by demonstrating qualitatively how Service members value the program and then displaying some changes in economic variables that can be differentiated between Veterans who have access to TAP and non-Veterans who do not have access to the program.

—According to one independent evaluation of the TAP, Service members who had participated in the TAP had, on average, found their first post-military job three weeks sooner than those who did not participate in the TAP.[2]

—An independent survey asked Soldiers who had used the TAP their opinions about the curriculum. The Soldiers reported positive opinions about the usefulness of the TAP. 90% of the Soldiers felt that it was a useful resource in searching for employment and 88% of them would recommend the TAP to a colleague.[3]

According to a curriculum assessment completed at the end of each TAP module, transitioning Service members gave the TAP positive reviews on its usefulness for their job search:

—92% of reported that they found the learning resources useful, including notes, handouts, and audio-visuals.

—83% reported that the modules enhanced their confidence in their own transition planning.

—81% reported that they now know how to access the necessary resources to find answers to transition questions that may arise in the next several months.

—79% said that the TAP was beneficial in helping them gain the information and skills they needed better to plan their transition.

—79% said that they would use what they learned from the TAP in their own transition planning.[4]

—A comparison of unemployment insurance usage suggests that recently separated members of the military (2013 & 2014) were more likely to apply what they learned in the re-designed TAP and were more involved earlier in job training programs than unemployed claimants who did not have military experience (8.5% of UCX claimants versus 5.1% of Military service claimants).[5]

—According to the Bureau of Labor Statistics, the unemployment rate for Veterans of the current conflict declined by nearly half from August 2013 to 5.7 percent in January 2016 coinciding with the time period when all Service members were required to take the re-designed TAP.[6]

The TAP also helps mitigate the adjustment costs associated with labor market transition. Military members must prepare for the adjustments associated with losing military benefits (*e.g.*, housing, health care, childcare) to the benefits afforded in private sector or nonmilitary public sector jobs. The TAP addresses this very important aspect based on a regulatory mandate that they attend both the DOLEW and the VA's Veterans Benefits Briefings, and complete a 12-month post-separation financial plan to meet CRS.

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[2] Source: Veterans Employment and Training Service (DOL VETS) VETS Fact Sheet 1: Transition Assistance Program.

[3] Source: Faurer, J., Rogers-Brodersen, A. and Bailie, P. (2014). Managing the Re-employment of Military Veterans through the Transition Assistance Program (TAP). Journal of Business and Economics. 12 (1), 55–60.

[4] Source: Statement of Dr. Susan Kelly Before the House Veterans Affairs Committee Subcommittee on Economic Opportunity (September 17, 2014).

[5] Source: Paul Heaton, RAND Corporation, Why is Veteran Unemployment So High?

[6] Source: Bureau of Labor Statistics, Current Population Survey (February 2016).

The early alignment of military skills with civilian workforce demands and deliberate planning for transition throughout a Service member's career sets the stage for a well-timed flow of Service members to our Nation's labor force. Employers state that transitioning Service members have critical job-related skills, competencies, and qualities including the ability to learn new skills, strong leadership qualities, flexibility to work well in teams or independently, ability to set and achieve goals, recognition of problems and implementation of solutions, and ability to persevere in the face of obstacles. However, application of these skills and attributes must be translated into employer friendly language. The TAP addresses these issues. The VA web portal supports providing private and public sector employers with a direct link to profiles and resumes of separating Service members where employers can recruit from this talent pipeline.

The rule benefits communities across the country. Civilian communities receive more educated, better-trained and more prepared citizens when separating Service members return to communities as Veterans. Service members learn to align their military skills with civilian employment opportunities, which enables the pool of highly trained, adaptable, transitioning Service members a more timely integration into the civilian workforce and local economies. Service members also learn through TAP about the rich suite of resources available to them from the interagency partners and have, for the asking, one-on-one appointments with interagency partner staff, who can provide assistance to Service members and their families both before and after the Service members leave active duty. More specifically, the components of the mandatory CRS target deliberate planning for financial preparedness as well as employment, education, housing and transportation plans and, for those Service members with families, childcare, schools, and spouse employment. The DoD and interagency partners incorporated the warm handover requirement for any transitioning Service member who does not meet the CRS. The warm handover is meant to serve as an immediate bridge from DoD to the federal partners' staffs, which are committed to providing needed support, resources and services to Service members post separation in the communities to which the Service members are returning. The intention is to provide early intervention before Veterans encounter the challenges currently identified by some communities, *e.g.*, financial struggles, unemployment, lack of social supports that can spiral down into homelessness, risk taking behaviors. Families and communities benefit.

The Task Force established expectations for program performance measures and outcomes. The redesigned TAP Interagency Executive Council and Senior Steering Group laid the preliminary groundwork to measure long-term program outcomes. While DoD is statutorily limited to measure outcomes while Service members are active duty, DoD performance measures are intended to demonstrate outcomes of the TAP redesign within DoD. These include the verified number of Service members separated from active duty who meet "VOW Act" mandates and who meet CRS prior to separation. At the end of fiscal year 2015, based on the DD Form 2958 data received by the Defense Manpower Data Center, 93.9% of Service members separating from Active Duty met "VOW Act" requirements and 89% met CRS or received a warm handover to an appropriate partner agency.

These measures set the stage for future long-term measures when transitioning Service members become Veterans. The DoD's TAP Information Technology (IT) architecture and data collection processes enable future data sharing with our Federal partners to show program effectiveness. The DoD requires the interagency support of its partners to further develop and collect data to define a relationship between TAP attendance, "VOW Act" compliance and CRS and long-term outcome measures, *e.g.* optimal use of Post 9/11 GI Bill benefits and long-term earnings of Post 9/11 Veterans.

Public Comments

The Department of Defense published an interim final rule in the **Federal Register** titled "Transition Assistance Program (TAP) for Military Personnel" on November 30, 2015 (80 FR 74678–74694) for a 45-day public comment period. The Department of Defense received one public comment, which is addressed in this preamble.

Comment: The comment from the Students Veterans of America (SVA) addressed two specific areas: (1) SVA wants to gain access to military installations for current student veterans and SVA chapter leaders, and potentially chapter advisors, to act as liaisons to institutes of higher learning and trusted information intermediaries for current Service members considering whether higher education is their preferred path, and if so, what opportunities they should pursue; and (2) SVA believes they are strong subject matter experts to provide feedback on the current Accessing Higher Education (AHE) curriculum and to help develop in-person or online training for base education advisors (EAs). Additionally, SVA wants to provide information about SVA chapters and peer support. SVA also requests to have the program implementation data updated for a more comprehensive picture of implementation of the AHE curriculum and they want to know the results of feedback mechanisms on the effectiveness of AHE's implementation. Finally, the SVA identifies several outstanding issues they want addressed concluding with its desire to have a SVA representative to the interagency curriculum working group.

SBA would like to have significant data to report and they want to make the data public, in order to better analyze what is working. They want to have top-line reporting on attendance and completion rate figures related to TAP and AHE. In addition, they want to know what barriers exist, and how those barriers may be addressed. SVA thinks there should be consideration of an assessment of the veterans' education readiness. Finally, SVA wants to know how decisions are being made by the interagency working group regarding TAP, as well as how policy disagreements are resolved between agencies, specifically on issues involving curriculum.

Response: The DoD is committed to providing military personnel from across the Services access to the TAP. The Secretary of Defense issued policy guidance and procedures in his memorandum, "Installation Access and Support Services to VA-Recognized Veteran Service Organizations/Military Service Organizations" dated December 23, 2014. The decision to provide access to military installations rests with local commanders. The SVA is encouraged to follow those procedures. The responsibility for acting as liaisons to institutes of higher learning falls under the purview of the Office of the Deputy Assistant Secretary of Defense for Force Education and Training. It does not fall under the purview of the TAP. SVA is encouraged to work with that office to pursue discussion regarding this issue.

The Department appreciates feedback from non-governmental external stakeholders. However, it must abide by law and policy when receiving any comments and conducting any interaction with any non-federal entity.

Retrospective Review

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR;rpp=10;po=0;D=DOD-2011-OS-0036.*

As required by Executive Order (E.O.) 13563, DoD intends to conduct periodic reviews along with its partner agencies to modify, or repeal, aspects, as appropriate, and after public notice and comment. DoD expects to conduct a review no later than five years from the publication of this final rule. With regard to a number of aspects of this rule, possible modifications will be considered based on public comments and related internal studies. DoD intends to synthesize and review available data to include publically available information on transition assistances related matters. For example, how many veterans use their Post-9/11 GI Bill, how many complete a degree, how long does it take a veteran to find employment following separation from the military? Following this, DoD may propose modifications to the current provisions of the existing rule.

Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated an "economically significant regulatory action," under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB) under the requirements of these Executive Orders.

Congressional Review Act (5 U.S.C. 801)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of $100 million or more or have certain other impacts. This final rule is a major rule under the Congressional Review Act.

Sec. 202, Public Law 104–4, "Unfunded Mandates Reform Act"

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

The DoD certifies that this final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980.

Executive Order 13132, "Federalism"

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State and local governments.

List of Subjects in 32 CFR Part 88

Employment, Military personnel.

Accordingly, the interim final rule published at 80 FR 74678–74694 on November 30, 2015, is adopted as a final rule with the following changes:

PART 88—[AMENDED]

■ 1. The authority citation for part 88 continues to read as follows:

Authority: 10 U.S.C. Chapter 58.

■ 2. Amend § 88.3 by revising the definition of "Involuntary separation" to read as follows:

§ 88.3 Definitions.

* * * * *

Involuntary separation. A Service member is considered to be involuntarily separated if the member was involuntarily discharged or denied reenlistment under other-than-adverse conditions (*e.g.,* force shaping) pursuant to 10 U.S.C. 1141.

* * * * *

■ 3. Amend § 88.5 by revising the introductory text for paragraphs (a), (c), (e), (f), and (j), and paragraph (j)(5) to read as follows:

§ 88.5 Responsibilities.

(a) Under the authority, direction, and control of the Under Secretary of Defense (Personnel and Readiness) (USD(P&R)), the Assistant Secretary of Defense for Readiness (ASD(R)):

* * * * *

(c) Under the authority, direction, and control of the USD (P&R), the Assistant Secretary of Defense for Manpower and Reserve Affairs (ASD (M&RA)):

* * * * *

(e) Under the authority, direction, and control of the (ASD(M&RA), the Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD(MPP) provides:

* * * * *

(f) Under the authority, direction, and control of the (ASD(R)), the Deputy Assistant Secretary of Defense for Force Education and Training (DASD(FE&T)):

* * * * *

(j) Under the authority, direction, and control of the (ASD(R)), the Director, TVPO:

* * * * *

(5) In conjunction with ASD(R), supports and coordinates meetings and activities for TAP governance bodies, as defined in § 88.3;

* * * * *

Dated: June 23, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15269 Filed 6–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0529]

RIN 1625–AA00

Safety Zone; 4th of July Firework Celebration; Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 4th of July Firework Celebration on Saturday, July 4, 2016. The safety zone will encompass a 300 yard radius around the White Street Pier in Key West Harbor. The safety zone is necessary to ensure the safety of spectators and the general public during the event. Persons and vessels, except those participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective on July 4, 2016. This rule will be enforced from 6 p.m. until 10:30 p.m. on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0529 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Petty Officer Jason D. Herbert, Sector Key West Prevention Department, U.S. Coast Guard; telephone (305)292–8772, email *jason.d.herbert@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS	Department of Homeland Security
NPRM	Notice of proposed rulemaking

II. Background Information and Regulatory History

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we did not receive notice of this event until May 20, 2016. It is therefore, impracticable to publish a NPRM because this rule must be implemented by July 4, 2016, to ensure the safety of spectators and the general public during this event.

For the same reason discussed above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to provide for the safety of life on the navigable waters of the United States during the 4th of July Firework Celebration.

IV. Discussion of the Rule

On July 4, 2016, the Key West Rotary Club is hosting the 4th of July Firework celebration. The event will consist of approximately 45 Minutes of fireworks in Key West Harbor with an estimated 150 spectator vessels.

This rule establishes a safety zone that will encompass certain navigable waters of the Key West Harbor. The safety zone will be enforced from 6 p.m. until 10:30 p.m. on July 4, 2016.

Persons and vessels may request authorization to enter the special local regulated area by contacting the Captain of the Port Key West by telephone at (305) 433–0954 or (305) 292–8727 or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the special local regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for four and a half hours; (2) the safety zone will be short in duration with no prolonged waterway impact; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Key West or a designated representative, they may operate in the surrounding areas during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone during the enforcement period if authorized by the Captain of the Port Key West or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Marine Safety Information Bulletin, and Broadcast Notice to Mariners.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the regulated area during the respective enforcement period. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.

L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a safety zone that will be enforced from 6 p.m. until 10:30 p.m. on July 4, 2016. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 165.T07–0529 to read as follows:

§ 165.T07–0529 Safety Zone; 4th of July Firework Celebration, Key West, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. A 300 yard radius from the end of White Street Pier.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) *Regulations.* (1) Non-participant persons and vessels are prohibited from entering the race area. Non-participant persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Key West by telephone at (305) 433–0954 or (305) 292–8727 or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(2) The Coast Guard will provide notice of the safety zone by Marine Safety Information Bulletin, Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Enforcement period.* This rule will be effective on July 4, 2016, and will be enforced from 6 p.m. until 10:30 p.m. July 4, 2016.

Dated: June 22, 2016.

J.A. Janszen,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2016–15224 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0854]

Special Local Regulations and Safety Zones; Recurring Marine Events and Fireworks Displays Within the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the fireworks display taking place on the Chesapeake Bay near Chesapeake Beach, MD on July 1, 2016. This is a change from the annually scheduled event on July 3, 2016, as indicated in 33 CFR 165.506. This

action is necessary to ensure safety of life on navigable waters during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District identifies the regulated area for this fireworks display event. During the enforcement period, no person or vessel may enter, transit through, anchor in, or remain within the regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 165.506, listed as event (b)10, Chesapeake Bay, Chesapeake Beach, MD; Safety Zone, in the Table to 33 CFR 165.506 will be enforced from 8:30 p.m. to 10:30 p.m. on July 1, 2016; and in the case of inclement weather enforcement will be from 8:30 p.m. to 10:30 p.m. on July 3, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region (WWM Division); telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION: On June 4, 2016, the Coast Guard was notified by the event sponsor that the date of this annual fireworks display was rescheduled to accommodate the weekend dates of the Independence Day Holiday for 2016. The time of the annual fireworks display remains unchanged. The Coast Guard will enforce the safety zone in 33 CFR 165.506 from 8:30 p.m. until 10:30 p.m. on July 1, 2016, for the Town of Chesapeake Beach, MD fireworks display. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Recurring Marine Events within the Fifth Coast Guard District, § 165.506, specifies the location of the regulated area for this safety zone as two circular shaped areas that include all waters of the Chesapeake Bay, within a 150 yard radius of the fireworks barge at latitude 38°41′36″ N., longitude 076°31′30″ W. and a 150 yard radius of the fireworks barge at latitude 38°41′28″ N., longitude 076°31′29″ W., located near Chesapeake Beach, Maryland. As specified in § 165.506(d), during the enforcement period, no vessel may not enter, remain in, or transit through the safety zone without approval from the Captain of the Port (COTP) or a COTP designated representative. The Coast Guard may be assisted by other Federal, state or local law enforcement agencies in enforcing this regulation. If the COTP or his designated on-scene Patrol Commander determines the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

This notice of enforcement is issued under authority of 33 CFR 165.506 (d) and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: June 15, 2016.

Michael W. Batchelder,

Commander, U.S. Coast Guard, Acting Captain of the Port Maryland-National Capital Region.

[FR Doc. 2016–15330 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0557]

RIN 1625–AA87; 1625–AA00

Security Zones; 2016 Republican National Convention, and Associated Voluntary First Amendment Safety Zones, Lake Erie and Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones and safety zones for navigable waters within the Cleveland Harbor during the 2016 Republican National Convention. The Republican National Convention and related activities will be held at Quicken Loans Arena and other venues from July 17, 2016 through July 22, 2016. The Department of Homeland Security has designated the 2016 Republican National Convention as a National Special Security Event (NSSE). The security zones are necessary to protect convention delegates, official parties, dignitaries, the public and surrounding waterways from terrorist acts, sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Buffalo or a designated representative.

DATES: This rule is effective from 8 a.m. July 15, 2016 through 11:59 p.m. July 22, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0557 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Michael Collet, Chief of Waterways Management, Sector Buffalo, U.S. Coast Guard; telephone 716–843–9322, email *D09-SMB-SECBuffalo-WWM@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
Pub. L.	Public Law
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to it being impracticable and contrary to the public interest. Due to the sensitive security issues related to the Republican National Convention, providing a public notice and comment period would be contrary to the security zone's intended objective of protecting VIPs and the public, because we cannot share the sensitive security information details prior to the rule being published.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this temporary rule's effective date would be contrary to the public interest given the need to ensure the safety and security of the event and participating members during the Republican National Convention from July 15, 2016 through July 22, 2016.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Buffalo has determined that potential hazards associated with this event are a security concern surrounding the area. These hazards include potential security threats, violent or disruptive public disorder, delivery of a weapon of mass destruction, launch of a stand-off attack weapon, or delivery of an armed assault force. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the security zone through various times throughout the event.

Additionally, the Coast Guard believes that, given the nature of the First Amendment activity expected and the likely type of vessels used by individuals desiring to express their First Amendment rights—namely kayaks and other small vessels—safety zones designating a voluntary First Amendment Area is necessary to ensure the safety of those vessels and persons who choose to express their views safely and without interference from, or interfering with, other maritime traffic.

IV. Discussion of the Rule

From July 17, 2016 through July 22, 2016 the Republican National Convention will be held in Cleveland, Ohio. The Primary venue for the 2016 Republican National Convention is Quicken Loans Arena, which is adjacent or proximate to the Cuyahoga River. Secondary venues and venues hosting convention-related activities include the Great Lakes Science Center, Burke Lakefront Airport, the Rock and Roll Hall of Fame and Museum, and other locations near downtown Cleveland on or in close proximity to navigable waters located on the Cuyahoga River and the portion of Lake Erie adjacent to the downtown Cleveland area. The security zones and safety zones will cover all navigable waters within the Cleveland Harbor surrounding the Burke Lakefront Airport and Rock and Roll Hall of Fame and Museum to the entrance of the Cuyahoga River and from the entrance of the Cuyahoga River to waters extending past the George V. Voinovich Bridge. The duration of the security zones and safety zone are intended to protect personnel, vessels, and the marine environment in these navigable waters while the convention and related activities are taking place. No vessel or person will be permitted to enter the security zones without obtaining permission from the Captain of the Port (COTP) or a designated representative.

The Secretary of the Department of Homeland Security has designated the 2016 Republican National Convention as a National Special Security Event (NSSE). NSSE's are significant events, which, due to their political, economic, social, or religious significance, may render them particularly attractive targets of terrorism or other criminal activity. The Federal government provides support, assistance, and resources to state and local governments to ensure public safety and security during NSSE's.

The Coast Guard has conducted threat, vulnerability, and risk analyses relating to the maritime transportation system and 2016 Republican National Convention activities. Threats confronting the 2016 Republican National Convention assume two primary forms: homeland security threats and violent or disruptive public disorder. Each of the locations described above are directly adjacent to Lake Erie or the Cuyahoga River and therefore make them vulnerable to waterborne threats. Considerable law enforcement presence on land may render maritime approaches a viable alternative. The City of Cleveland has critical infrastructure in its port area, which is proximate to the downtown area and the Convention's main venues. The Port of Cleveland is an industrial-based port, with significant storage and shipment of hazardous materials. Therefore, with regard to homeland security threats, the 2016 Republican National Convention presents an attractive target for terrorist and extremist organizations.

The Department of Homeland Security Small Vessel Security Strategy sets forth several threat scenarios that must be mitigated in the maritime security planning for the 2016 Republican Convention. These threats include the potential use of a small vessel to: (1) Deliver a weapon of mass destruction; (2) launch a stand-off attack weapon; or (3) deliver an armed assault force. The 2016 Republican National Convention maritime security planning anticipates these threats, while minimizing the public impact of security operations.

The security zones, safety zones, and accompanying security measures have been specifically developed to mitigate the risk of threats and vulnerabilities identified in the analysis discussed above. These measures have been limited to the minimum necessary to mitigate risks associated with the identified threats.

While the Coast Guard is concerned about any security threats to the areas described above, the Coast Guard is likewise committed to ensuring that individuals who wish to express their opinions on any issue during the 2016 Republican National Convention have the means to do so in a manner that protects them and other vessels operating on Lake Erie and the Cuyahoga River. Therefore, the Coast Guard is also establishing two safety zones located northwest of the Rock and Roll Hall of Fame and Museum and on the Western side of the entrance to the Cuyahoga River, wherein the Coast Guard will allow demonstrators or any individual who wishes to express their views. These areas are being established to allow individuals expressing their views the means to do so in a safe manner to their intended audience without posing an undue risk to maritime safety. After analyzing maritime traffic patterns and other environmental factors, the Coast Guard is requiring that any persons or vessels permitted to operate within the safety zones shall travel at the minimum speed necessary to maintain a safe course. The navigation rules shall apply at all times within the safety zones.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss individuals First Amendment rights.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time of year of the security zone and safety zone. Vessel traffic will be able to safely transit around the security zones and safety zone; the zones will impact a small designated area and will be enforced only during the event and event-related activities. The security zones and safety zone will be in a location where commercial vessel traffic is expected to be minimal during enforcement; commercial vessel traffic will be authorized to transit the security zones to the extent compatible with public safety and security. Persons and vessels will be able to operate in the surrounding area adjacent to the security zones and safety zone during the enforcement period, and will be able to enter within the security zones if authorized by the Captain of the Port Buffalo or a designated representative. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zones.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A. above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves security zones and a safety zone enforced intermittently between July 15, 2016 through July 22, 2016 that will prohibit entry within the waters surrounding the Burke Lakefront Airport, Rock and Roll Hall of Fame, and portions of the Cuyahoga River. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. First Amendment Activities

The Coast Guard respects individuals' First Amendment rights. Individuals wishing to exercise First Amendment Rights are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate First Amendment Activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for 33 CFR part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0557 to read as follows:

§ 165.T09–0557 Security Zones; 2016 Republican National Convention, and Associated Voluntary First Amendment Safety Zones, Lake Erie and Cuyahoga River, Cleveland, OH.

(a) *Locations (Broken down into 6 zones that will be enforced intermittently).*

(1) Zone 1: Encompasses all waters of Cleveland Harbor (near the Burke Lakefront Airport) starting shoreline at position 41°31′45″ N., 081°39′20″ W. (just East of Forest City Yacht Club and West of Quay 55); then extending approximately 4,000 feet northwest to position 41°32′23″ N., 081°39′46″ W. (about 900 feet past the east break wall); then extending approximately 1.6 nm southwest to position 41°31′26″ N., 081°41′28″ W.; then extending southwester to the shoreline at position 41°31′07″ N., 081°41′17″ W. (toward the Southwest corner of the Burke Lakefront Airport); then following the shoreline back to the point of origin.

(2) Zone 2: Encompasses all waters of Cleveland Harbor (near the Rock and Roll Hall of Fame and Museum) starting shoreline at position 41°31′07″ N., 081°41′17″ W. (near the Southwest corner of the Burke Lakefront Airport); then extending approximately 2,100 feet northwest to position 41°31′26″ N., 081°41′28″ W.; then extending approximately 1 nm southwest to position 41°30′47″ N., 081°42′35″ W. (about 900 feet past the west break wall); then extending to the shoreline at position 41°30′24″ N., 081°42′19″ W. (Southwest of the Rock and Roll Hall of Fame and Museum); then following the shoreline back to the point of origin.

(3) Zone 3: Encompasses all waters of Cleveland Harbor (from about 2,000 feet southwest of the Rock and Roll Hall of Fame throughout the Cuyahoga river) starting at 41°30′24″ N., 081°42′19″ W. (Southwest of the Rock and Roll Hall of Fame); then extending approximately 2,600 feet northwest to position 41°30′47″ N., 081°42′35″ W.; then extending approximately 4,000 feet southwest to position 41°30′26″ N., 081°43′17″ W. (about 1,200 feet southwest of Cleveland Harbor West Pierhead Lighthouse); then extending shoreline to position 41°29′59″ N. and 081°43′01″ W. (just east of the eastern entrance to the Whiskey Island Marina), then following the west bank up the Cuyahoga River, not including the Old River, to position 41°29′40″ N., 081°41′55″ W. and extending in a straight line across the river to 41°29′38″ N. and 081°41′53″ W. (the West side of Carter Road Bridge); then following the east bank of the Cuyahoga River and shoreline back to the point of origin.

(4) Zone 4: Encompasses all waters of the Cuyahoga River (near collision bend) starting near the Carter Road Bridge at position 41°29′40″ N., 081°41′55″ W. then extending in a straight line across the river to position 41°29′38″ N., 081°41′53″ W.; then continuing along the shoreline of the river to a point just east of the George V. Voinovich Bridge at position 41°29′11″ N., 081°41′23″ W.; then extending in a straight line across the river to 41°29′09″ N., 081°41′23″ W.; then following the shoreline back to the point of origin.

(5) Zone 5: Voluntary First Amendment Safety Zone: Encompasses all waters of Lake Erie, Cleveland Harbor; Cleveland, OH (in the west basin) starting at position 41°30′30″ N., 081°42′27″ W.; then extending approximately 650 feet northwest to position 41°30′36″ N., 081°42′31″ W.; then extending approximately 1,200 feet southwest to position 41°30′29″ N., 081°42′44″ W.; then extending to approximately 650 feet to position 41°30′23″ N. and 081°42′40″ W.; then following a straight line back to the point of origin.

(6) Zone 6: Voluntary First Amendment Safety Zone: Encompasses all waters of Lake Erie, Cleveland Harbor; Cleveland, OH (near Whiskey Island Marina) starting at position 41°30′06″ N., 081°43′14″ W.; then extending approximately 600 feet northwest to position 41°30′11″ N., 081°43′17″ W.; then extending approximately 1,200 feet southwest to position 41°30′04″ N., 081°43′30″ W.; then extending to position 41°29′59″ N. and 081°43′26″ W.; then following back to the point of origin.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Buffalo.

(c) *Regulations.* (1) Under the general security zone regulations in § 165.33 of this part, you may not enter the security zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter the security zones, contact the COTP Buffalo or the COTP's representative. Those in the security zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Entrance into the safety zones, zones 5–6, do not require notification to the COTP or the COTP's designated representative; however persons or vessels operating within the safety zones shall travel at the minimum speed necessary to maintain a safe course. Under the general safety zone regulations in § 165.23(d) of this part, each person in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Vessels wishing to enter the safety zones will not be allowed to cross an active security zone and should make alternative arrangements if necessary.

(d) *Enforcement Period.* Zones 1–4 will be enforced intermittently from 8 a.m. July 15, 2016 through 11:59 p.m. July 22, 2016. Zone 5 will be enforced from 2 p.m. through 11:59 p.m. on July 17, 2016. Zone 6 will be enforced from 9 a.m. on July 17, 2016 through 8 p.m. on July 21, 2016. Public notice of enforcement periods will be made via Broadcast Notice to Mariners over VHF channel 16.

Dated: June 22, 2016.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2016–15240 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0518]

Special Local Regulations; Marine Events Held in the Sector Delaware Bay Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the Delaware River, near Philadelphia, Pennsylvania, for annual fireworks displays in the Captain of the Port Delaware Bay zone at specified times from June 15, 2016 through July 4, 2016. Enforcement of this zone is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after these fireworks events. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port (COTP) or a designated representative.

DATES: The regulation in 33 CFR 165.506 will be enforced for the safety zone listed in Section (a), Line (16) of the Table in § 165.506 from 8 p.m. until 10 p.m. on July 1, 2016, through July 4, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LT Brennan Dougherty, Sector Delaware Bay Waterways Management Division, U.S. Coast Guard; telephone 215–271–4851, email *Brennan.P.Dougherty@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for fireworks in the Delaware River in Philadelphia, PA listed in 33 CFR 165.506, in Section (a), Line (16) of the Table from 8 p.m. until 10 p.m. on June 15, 2016, and July 1, 2016, through July 4, 2016. This action is being taken to provide for the safety of life on navigable waterways during the fireworks display. Our regulation for Recurring Marine Events in Captain of the Port Delaware Bay Zone, § 165.506, specifies the location of the regulated area for this safety zone as all waters of

Delaware River, adjacent to Penn's Landing, Philadelphia, PA, bounded from shoreline to shoreline, bounded on the south by a line running east to west from points along the shoreline at latitude 39°56′31.2″ N, longitude 075°08′28.1″ W; thence to latitude 39°56′29″.1 N, longitude 075°07′56.5″ W, and bounded on the north by the Benjamin Franklin Bridge.

As specified in § 165.506, during the enforcement period no vessel may transit this safety zone without approval from the Captain of the Port Delaware Bay (COTP). If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

This notice of enforcement is issued under authority of 33 CFR 165.506 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advanced notification of this enforcement period via Broadcast Notice to Mariners (BNM). If the COTP, Delaware Bay, determines that the regulated area need not be enforced for the full duration, a BNM to grant general permission to enter the safety zone will be used.

Dated: June 14, 2016.

Benjamin A. Cooper,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2016–15032 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0538]

RIN 1625–AA00

Safety Zone; Allegheny River Mile 0–0.5, Monongahela River Mile 0–0.5, Ohio River Mile 0–0.5, Pittsburgh, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Allegheny River, Monongahela River, and Ohio River from mile 0.0–0.5 on each of the three rivers. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Pittsburgh.

DATES: This rule is effective on July 9, 2016 from 8:30 p.m. until 10:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0538 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MST1 Jennifer Haggins, Marine Safety Unit Pittsburgh, U.S. Coast Guard, at telephone 412–221–0807, email *Jennifer.L.Haggins@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard received notice on June 8, 2016 that this fireworks display would take place. After receiving and fully reviewing the event information, circumstances, and exact location, the Coast Guard determined that a safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display on the navigable waterway. It would be impracticable to complete the full NPRM process for this safety zone because it needs to be established by July 9, 2016. The fireworks display has been advertised and the local community has prepared for the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to public interest of ensuring the safety of spectators and vessels during the event. Immediate action is necessary to prevent possible loss of life and property during the hazards created by a barge-based fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Pittsburgh (COTP) has determined that a safety zone is needed on July 9, 2016. This rule is needed to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone on July 9, 2016 from 8:30 p.m. until 10:30 p.m. The safety zone will cover all navigable waters on the Allegheny River, Monongahela River, and Ohio River from mile 0.0–0.5 on each of the three rivers. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment from potential hazards created from a barge-based firework display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone impacts a small portion of the waterway on each of the three rivers and for a limited duration of two hours. Vessel traffic will be informed about the safety zone through local notices to mariners. Moreover, the Coast Guard will issue broadcast botices to mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting two hours that will prohibit entry to the Allegheny River, Monongahela River, and Ohio River from mile 0.0–0.5 on each of the three rivers, during the barge-based firework event. It is categorically excluded from further review under paragraph 34 (g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0538 to read as follows:

§ 165.T08–0538 Safety Zone, Allegheny River, Monongahela River, and Ohio River, Pittsburgh, PA.

(a) *Location.* The following area is a safety zone: Allegheny River, Monongahela River, and Ohio River from mile 0.0–0.5 on each of the three rivers.

(b) *Enforcement.* This rule will be enforced, from 8:30 p.m. until 10:30 p.m. on July 9, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Pittsburgh or a designated representative. The Captain of the Pittsburgh representative may be contacted at 412–221–0807.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers.

(d) *Information Broadcasts.* The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

L. Mcclain, Jr.,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2016–15239 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

RIN 2135–40

Civil Penalties

AGENCY: Saint Lawrence Seaway Development Corporation (SLSDC), Department of Transportation (DOT).

ACTION: Interim final rule.

SUMMARY: This interim final rule updates the maximum civil penalty amounts for violations of statutes and regulations administered by SLSDC pursuant to the Federal Civil Penalties Inflation Adjustment Improvement Act of 2015. This final rule amends our regulations to reflect the new civil penalty amounts for violations of the Seaway Regulations and Rules under the authority of the Ports and Waterways Safety Act of 1972, as amended (PWSA).

DATES: *Effective date:* This rule is effective July 28, 2016.

FOR FURTHER INFORMATION CONTACT: Carrie Lavigne, Chief Counsel, SLSDC, telephone (315) 764–3231, 180 Andrews Street, Massena, NY 13362.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Improvement Act (the 2015 Act), Public Law 114–74, Section 701, was signed into law. The purpose of the 2015 Act is to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to make an initial catch up adjustment to the civil monetary penalties they administer through an interim final rule and then to make subsequent annual adjustments for inflation. The amount of increase of any adjustment to a civil penalty pursuant to the 2015 Act is limited to 150 percent of the current penalty. Agencies are required to issue the interim final rule with the initial catch up adjustment by July 1, 2016.

The method of calculating inflationary adjustments in the 2015 Act differs substantially from the methods used in past inflationary adjustment rulemakings conducted pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), Public Law 101–410. Previously, adjustments to civil penalties were conducted under rules that required significant rounding of figures. For example, a penalty increase that was greater than $1,000, but less than or equal to $10,000, would be rounded to the nearest multiple of $1,000. While this allowed penalties to be kept at round numbers, it meant that penalties would often not be increased at all if the inflation factor was not large enough. Furthermore, increases to penalties were capped at 10 percent. Over time, this formula caused penalties to lose value relative to total inflation.

The 2015 Act has removed these rounding rules; now, penalties are simply rounded to the nearest $1. While this creates penalty values that are no longer round numbers, it does ensure that penalties will be increased each year to a figure commensurate with the actual calculated inflation. Furthermore, the 2015 Act "resets" the inflation calculations by excluding prior inflationary adjustments under the Inflation Adjustment Act, which contributed to a decline in the real value of penalty levels. To do this, the 2015 Act requires agencies to identify, for each penalty, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (*i.e.*, originally enacted by Congress) or last adjusted by statute or regulation other than pursuant to the Inflation Adjustment Act.

The Director of the Office of Management and Budget (OMB) provided guidance to agencies in a February 24, 2016 memorandum on how to calculate the initial adjustment required by the 2015 Act.[1] The initial catch up adjustment is based on the change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty amount was established or last adjusted by Congress and the October 2015 CPI–U. The February 24, 2016 memorandum contains a table with a multiplier for the change in CPI–U from the year the penalty was established or last adjusted to 2015. To arrive at the adjusted penalty the agency must multiply the penalty amount when it was established or last adjusted by Congress, excluding adjustments under the Inflation Adjustment Act, by the multiplier for the increase in CPI–U from the year the penalty was established or adjusted provided in the February 24, 2016 memorandum. The 2015 Act limits the initial inflationary adjustment to 150 percent of the current penalty. To determine whether the increase in the adjusted penalty is less than 150 percent, the agency must multiply the current penalty by 250 percent. The adjusted penalty is the lesser of either the adjusted penalty based on the multiplier for CPI–U in Table A of the February 24, 2016 memorandum or an amount equal to 250 percent of the current penalty. This interim final rule adjusts the civil penalties for violations of statutes and regulations that SLSDC administers consistent with the February 24, 2016 memorandum.

II. Inflationary Adjustments to Penalty Amounts in 33 CFR Part 401

The Ports and Waterways Act of 1972, as amended by the Ports and Tanker Safety Act, Public Law 95–474, sec. 2, Oct. 17, 1978, 92 Stat. 1471 (1978), established a maximum civil penalty of $25,000 for each violation of the Seaway Rules and Regulations at 33 CFR part 401. This civil penalty has not been updated since it was established, except for inflationary adjustments pursuant to the Inflation Adjustment Act of 1990. Applying the multiplier for the increase in CPI–U for 1978 in Table A of the February 24, 2016 memorandum (3.54453) results in an adjusted civil penalty of $88,613, which is below the 150 percent cap Accordingly, paragraph (a) of § 401.102 is being amended to change the amount of the penalty to $88,613.

Public Comment

SLSDC is promulgating this interim final rule to ensure that the civil penalties amount contained in 33 CFR 401.102 reflects the statutorily mandated ranges as adjusted for inflation. Pursuant to the 2015 Act, SLSDC is required to promulgate a "catch-up adjustment" through an interim final rule. Pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), SLSDC finds that good cause exists for immediate implementation of this interim final rule without prior notice and comment because it would be impracticable to delay publication of this rule for notice and comment and because public comment is unnecessary. By operation of the Act, SLSDC must publish the catch-up adjustment by interim final rule by July 1, 2016. Additionally, the 2015 Act provides a clear formula for adjustment of the civil penalties, leaving the agency little room for discretion. For these reasons, SLSDC finds that notice and comment would be impracticable and is unnecessary in this situation.

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[1] Memorandum from the Director of OMB to Heads of Executive Departments and Agencies, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Feb. 24, 2016), *available at www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

III. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

SLSDC has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget. Because this rulemaking does not change the number of entities that are subject to civil penalties, the impacts are limited.

We also do not expect the increase in the civil penalty amount in 33 CFR 401.102 to be economically significant. Since January 1, 2010 to the present, the SLSDC assessed a total of approximately $27,000 in civil fines and penalties. Thus, increasing the current civil penalty amount would not result in an annual effect on the economy of $100 million or more.

Regulatory Flexibility Act

We have also considered the impacts of this rule under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The St. Lawrence Seaway Regulations and Rules primarily relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Executive Order 13132 (Federalism)

Executive Order 13132 requires SLSDC to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The reason is that this rule will generally apply to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels. Thus, the requirements of Section 6 of the Executive Order do not apply.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

Executive Order 12778 (Civil Justice Reform)

This rule does not have a retroactive or preemptive effect. Judicial review of a rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation is amending 33 CFR part 401 as follows:

PART 401—SEAWAY REGULATIONS AND RULES

Subpart A—Regulations

■ 1. The authority citation for subpart A of part 401 is revised to read as follows:

Authority: 33 U.S.C. 981–990, 1231 and 1232, 49 CFR 1.52, unless otherwise noted.

■ 2. In § 401.102, paragraph (a) is revised to read as follows:

§ 401.102 Civil penalty.

(a) A person, as described in § 401.101(b) who violates a regulation is liable to a civil penalty of not more than $88,613.

* * * * *

Issued on June 22, 2016

Carrie Lavigne,

Chief Counsel.

[FR Doc. 2016–15118 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2016–0230; FRL–9946–98–Region 5]

Air Plan Approval; Michigan; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the Michigan State Implementation Plan (SIP). The regulations, statutes, source-specific provisions and quasi-regulatory materials affected by this update have been previously submitted by the Michigan Department of Environmental Quality (MDEQ) and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), and the EPA Regional Office.

DATES: This action is effective June 28, 2016.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.* To view the material at the Region 5 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. What is a SIP?

Each state has a SIP containing the control measures and strategies used to attain and maintain the National Ambient Air Quality Standards (NAAQS). The SIP is extensive, containing elements covering a variety of subjects, such as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures and strategies are approved by EPA, after notice and comment rulemaking, they are incorporated into the federally approved SIP and are identified in Title 40 of the Code of Federal Regulations part 52 "Approval and Promulgation of Implementation Plans" (40 CFR part 52). The actual state regulations approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the state is enforcing the regulations. It also allows EPA and the public to take enforcement action, should a state not enforce its SIP-approved regulations.

B. How do the State and EPA update the SIP?

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA must, from time to time, take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures, and "Identification of Plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document. On September 6, 2006 (71 FR 52467), EPA published a document in the **Federal Register** revising the format of the IBR material for Michigan.

II. What action is EPA taking?

In this action, EPA is publishing updated tables listing the regulatory and quasi-regulatory materials in the Michigan SIP as of May 1, 2016. This update includes SIP materials that have been submitted by Michigan and approved by EPA since this revised format was first applied to the Michigan SIP in 2006. EPA is removing the EPA Headquarters Library from paragraph (b)(3), as IBR materials are no longer available at this location. Finally, EPA is correcting typographical errors, including omission and other minor errors, and making formatting changes to the tables in subsection 52.2170 (c), (d), and (e).

III. Incorporation by Reference

In this action, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Good Cause Exemption

EPA has determined that this rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

V. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the Michigan SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization update action for the State of Michigan.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 18, 2016.

Robert A. Kaplan,

Acting Regional Administrator, Region 5.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1170 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c), (d), and (e) of this section with an EPA approval date prior to May 1, 2016, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d), and (e) of this section with the EPA approval dates after May 1, 2016, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 5 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated state rules/regulations which have been approved as part of the SIP as of May 1, 2016.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, IL 60604, and the National Archives and Records Administration. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA approved regulations.*

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
Hazardous Waste Management				
R 299.9109(p)	Used oil	9/11/2000	4/17/2015, 80 FR 21183.	
Annual Reporting				
R 336.202	Annual reports	11/11/1986	3/8/1994, 59 FR 10752.	

EPA-Approved Michigan Regulations—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
		Part 1. General Provisions		
R 336.1101	Definitions; A	4/28/1993	9/7/1994, 59 FR 46182.	Only: actual emissions, air-dried coating, air quality standard, allowable emissions, and alternate opacity.
R 336.1101	Definitions; A	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1102	Definitions; B	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1103	Definitions; C	4/28/1993	9/7/1994, 59 FR 46182.	Only: creditable.
R 336.1103	Definitions; C	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1104	Definitions; D	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1105	Definitions; E	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1106	Definitions; F	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1107	Definitions; G	5/28/2002	2/24/2003, 68 FR 8550.	
R 336.1108	Definitions; H	5/28/2002	2/24/2003, 68 FR 8550.	
R 336.1109	Definitions: I	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1112	Definitions; L	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1113	Definitions: M	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1114	Definitions; N	3/28/2008	12/16/2013, 78 FR 76064.	
R 336.1115	Definitions; O	8/22/1981	7/26/1982, 47 FR 32116.	
R 336.1116	Definitions; P	11/30/2012	4/4/2014, 79 FR 18802.	
R 336.1118	Definitions; R	5/28/2002	2/24/2003, 68 FR 8550.	
R 336.1119	Definitions; S	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1120	Definitions; T	5/28/2002	2/24/2003, 68 FR 8550.	
R 336.1121	Definitions; U	4/19/1989	9/15/1994, 59 FR 47254.	
R 336.1122	Definitions; V	11/30/2012	4/4/2014, 79 FR 18802.	
R 336.1123	Definitions; W	8/22/1981	7/26/1982, 47 FR 32116.	
R 336.1127	Terms defined in the act	1/19/1980	5/6/1980, 45 FR 29790.	
		Part 2. Air Use Approval		
R 336.1201	Permits to install	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1202	Waivers of approval	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1203	Information required	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1204	Authority of agents	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1206	Processing of applications for other facilities.	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1207	Denial of permits to install	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1208	Permits to operate	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1221	Construction of sources of particulate matter, sulfur dioxide, or carbon monoxide in or near nonattainment areas; conditions for approval.	7/17/1980	1/12/1982, 47 FR 1292.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1240	Required air quality models	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1241	Air quality modeling demonstration requirements.	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1280	Permit system exemptions; cooling and ventilation equipment.	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1281	Permit system exemptions; cleaning, washing and drying equipment.	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1282	Permit system exemptions; cooling and ventilation equipment.	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1283	Permit system exemptions; testing and inspection equipment.	7/17/1980	8/28/1981, 46 FR 43422.	
R 336.1284	Permit system exemptions; containers	1/19/1980	5/6/1980, 45 FR 29790.	
R 336.1285	Permit system exemptions; miscellaneous.	1/19/1980	5/6/1980, 45 FR 29790.	
Part 3. Emission Limitations and Prohibitions—Particulate Matter				
R 336.1301	Standards for density of emissions	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1303	Grading visible emissions	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1310	Open burning	4/1/2013	6/2/2015, 80 FR 31305.	
R 336.1331	Emissions of particulate matter	3/19/2002	6/1/2006, 71 FR 31093.	All except Table 31, section C.8.
R 336.1331, Table 31.	Particulate matter emission schedule	1/19/1980	5/22/1981, 46 FR 27923.	Only Section C.7, preheater equipment.
R 336.1350	Emissions from larry-car charging of coke ovens.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1351	Charging hole emissions from coke ovens.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1352	Pushing operation fugitive emissions from coke ovens.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1353	Standpipe assembly emissions during coke cycle from coke ovens.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1354	Standpipe assembly emissions during decarbonization from coke ovens.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1355	Coke oven gas collector main emissions from slot-type coke ovens.	1/19/1980	5/22/1981, 46 FR 27923.	
R 336.1356	Coke oven door emissions from coke ovens; doors that are 5 meters or shorter.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1357	Coke oven door emissions from coke oven doors; doors that are taller than 5 meters.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1358	Roof monitor visible emissions at steel manufacturing facilities from electric arc furnaces and blast furnaces.	4/30/1998	6/1/2006, 71 FR 31093.	
R 336.1359	Visible emissions from scarfer operation stacks at steel manufacturing facilities.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1360	Visible emissions from coke oven push stacks.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1361	Visible emissions from blast furnace casthouse operations at steel manufacturing facilities.	4/30/1998	6/1/2006, 71 FR 31093.	
R 336.1362	Visible emissions from electric arc furnace operations at steel manufacturing facilities.	4/30/1998	6/1/2006, 71 FR 31093.	
R 336.1363	Visible emissions from argon-oxygen decarburization operations at steel manufacturing facilities.	4/30/1998	6/1/2006, 71 FR 31093.	
R 336.1364	Visible emissions from basic oxygen furnace operations.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1365	Visible emissions from hot metal transfer operations at steel manufacturing facilities.	2/22/1985	6/11/1992, 57 FR 24752.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1366	Visible emissions from hot metal desulphurization operations at steel manufacturing facilities.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1367	Visible emissions from sintering operations.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.1370	Collected air contaminants	2/18/1981	11/15/1982, 47 FR 51398.	
R 336.1371	Fugitive dust control programs other than areas listed in Table 36.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1372	Fugitive dust control program; required activities; typical control methods.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1374	Particulate matter contingency measures: Areas listed in Table 37.	3/19/2002	6/1/2006, 71 FR 31093.	
Part 4. Emission Limitations and Prohibitions—Sulfur-Bearing Compounds				
R 336.1401	Emissions of sulfur dioxide from power plants.	3/11/2013	4/17/2015, 80 FR 21183.	
R 336.1401a	Definitions	3/11/2013	4/17/2015, 80 FR 21183.	
R 336.1402	Emission of SO_2 from fuel-burning sources other than power plants.	3/11/2013	4/17/2015, 80 FR 21183.	
R 336.1403	Oil- and natural gas-producing or transporting facilities and natural gas-processing facilities; emissions; operation.	3/19/2002	4/17/2015, 80 FR 21183.	
R 336.1404	Emissions of SO_2 and sulfuric acid mist from sulfuric acid plants.	3/11/2013	4/17/2015, 80 FR 21183.	
R 336.1405	Emissions from sulfur recovery plants located within Wayne county.	1/31/2008	4/17/2015, 80 FR 21183.	
R 336.1406	Hydrogen sulfide emissions from facilities located within Wayne county.	1/31/2008	4/17/2015, 80 FR 21183.	
R 336.1407	Sulfur compound emissions from sources located within Wayne county and not previously specified.	3/11/2013	4/17/2015, 80 FR 21183.	
Part 6. Emission Limitations and Prohibitions—Existing Sources of Volatile Organic Compound Emissions				
R 336.1601	Definitions	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1602	General provisions for existing sources of volatile organic compound emissions.	4/10/2000	6/28/2002, 67 FR 43548.	
R 336.1604	Storage of organic compounds having a true vapor pressure of more than 1.5 psia, but less than 11 psia, in existing fixed roof stationary vessels of more than 40,000 gallon capacity.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1605	Storage of organic compounds having a true vapor pressure of 11 or more psia in existing stationary vessels of more than 40,000 gallon capacity.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1606	Loading gasoline into existing stationary vessels of more than 2,000 gallon capacity at dispensing facilities handling 250,000 gallons per year.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1607	Loading gasoline into existing stationary vessels of more than 2,000 capacity at loading facilities.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1608	Loading gasoline into existing delivery vessels at loading facilities handling less than 5,000,000 gallons per year.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1609	Loading existing delivery vessels with organic compounds having a true vapor pressure of more than 1.5 psia at existing loading facilities handling 5,000,000 or more gallons of such compounds per year.	4/20/1989	9/15/1994, 59 FR 47254.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1610	Existing coating lines; emission of volatile organic compounds from existing automobile, light-duty truck, and other product and material coating lines.	4/28/1993	9/7/1994, 59 FR 46182.	
R 336.1611	Existing cold cleaners	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1612	Existing open top vapor degreasers	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1613	Existing conveyorized cold cleaners	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1614	Existing conveyorized vapor degreasers	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1615	Existing vacuum-producing system at petroleum refineries.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1616	Process unit turnarounds at petroleum refineries.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1617	Existing organic compound-water separators at petroleum refineries.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1618	Use of cutback paving asphalt	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1619	Perchloroethylene; emission from existing dry cleaning equipment; disposal.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1620	Emission of volatile organic compounds from the coating of flat wood paneling from existing coating lines.	4/28/1993	9/7/1994, 59 FR 46182.	
R 336.1621	Emission of volatile organic compounds from the coating of metallic surfaces from existing coating lines.	4/28/1993	9/7/1994, 59 FR 46182.	
R 336.1622	Emission of volatile organic compound from existing component of a petroleum refinery; refinery monitoring program.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1623	Storage of petroleum liquids having a true vapor pressure of more than 1.0 psia but less than 11.0 psia, in existing external floating roof stationary vessels of more than 40,000 gallon capacity.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1624	Emission of volatile organic compound from an existing graphic arts line.	11/18/1993	9/7/1994, 59 FR 46182.	
R 336.1625	Emission of volatile organic compound from existing equipment utilized in the manufacturing of synthesized pharmaceutical products.	11/30/2000	6/1/2006, 71 FR 31093.	
R 336.1627	Delivery Vessels; Vapor Collection Systems.	2/22/2006	8/3/2007, 72 FR 43169.	
R 336.1628	Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1629	Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1630	Emission of volatile organic compounds from existing paint manufacturing processes.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1631	Emission of volatile organic compounds from existing process equipment utilized in manufacture of polystyrene of other organic resins.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1632	Emission of volatile organic compounds form existing automobile, truck, and business machine plastic part coating lines.	4/28/1993	9/7/1994, 59 FR 46182.	
R 336.1651	Standards for degreasers	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1660	Standards for Volatile Organic Compounds Emissions from Consumer Products.	10/3/2007	5/22/2009, 74 FR 23952.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1661	Definitions for Consumer Products	10/3/2007	5/22/2009, 74 FR 23952.	
Part 7. Emission Limitations and Prohibitions—New Sources of Volatile Organic Compound Emissions				
R 336.1702	General provisions for new sources of volatile organic compound emissions.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1705	Loading gasoline into delivery vessels at new loading facilities handling less than 5,000,000 gallons per year.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1706	Loading delivery vessels with organic compounds having a true vapor pressure of more than 1.5 psia at new loading facilities handling 5,000,000 or more gallons of such compounds per year.	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1707	New cold cleaners	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1708	New open top vapor degreasers	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1709	New conveyorized cold cleaners	6/15/1997	7/21/1999, 64 FR 39034.	
R 336.1710	New conveyorized vapor degreasers	6/15/1997	7/21/1999, 64 FR 39034.	
Part 8. Emission Limitations and Prohibitions—Oxides of Nitrogen				
R 336.1801	Emission of oxides of nitrogen from non-SIP call stationary sources.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1802	Applicability under oxides of nitrogen budget trading program.	5/20/2004	5/4/2005, 70 FR 23029.	
R 336.1802a	Adoption by reference	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1803	Definitions	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1804	Retired unit exemption from oxides of nitrogen budget trading program.	5/20/2004	5/4/2005, 70 FR 23029.	
R 336.1805	Standard requirements of oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1806	Computation of time under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1807	Authorized account representative under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1808	Permit requirements under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1809	Compliance certification under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1810	Allowance allocations under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1811	New source set-aside under oxides of nitrogen budget trading program.	5/20/2004	5/4/2005, 70 FR 23029.	
R 336.1812	Allowance tracking system and transfers under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1813	Monitoring and reporting requirements under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1814	Individual opt-ins under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1815	Allowance banking under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1816	Compliance supplement pool under oxides of nitrogen budget trading program.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1817	Emission limitations and restrictions for Portland cement kilns.	12/4/2002	5/4/2005, 70 FR 23029.	
R 336.1818	Emission limitations for stationary internal combustion engines.	11/20/2006	1/29/2008, 73 FR 5101.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.1821	CAIR NO_X ozone and annual trading programs; applicability determinations.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1822	CAIR NO_X ozone season trading program; allowance allocations.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1823	New EGUs, new non-EGUs, and newly affected EGUs under CAIR NO_X ozone season trading program; allowance allocations.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1824	CAIR NO_X ozone season trading program; hardship set-aside.	6/25/2007	8/18/2009, 74 FR 41637.	
R 336.1825	CAIR NO_X ozone season trading program; renewable set-aside.	6/25/2007	8/18/2009, 74 FR 41637.	
R 336.1826	CAIR NO_X ozone season trading program; opt-in provisions.	6/25/2007	8/18/2009, 74 FR 41637.	
R 336.1830	CAIR NO_X annual trading program; allowance allocations.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1831	New EGUs under CAIR NO_X annual trading program; allowance allocations.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1832	CAIR NO_X annual trading program; hardship set-aside.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1833	CAIR NO_X annual trading program; compliance supplement pool.	5/28/2009	8/18/2009, 74 FR 41637.	
R 336.1834	Opt-in provisions under the CAIR NO_X annual trading program.	6/25/2007	8/18/2009, 74 FR 41637.	
Part 9. Emission Limitations and Prohibitions—Miscellaneous				
R 339.1906	Diluting and concealing emissions	3/19/2002	6/1/2006, 71 FR 31093.	
R 339.1910	Air-cleaning devices	1/19/1980	5/6/1980, 45 FR 29790.	
R 339.1911	Malfunction abatement plans	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.1912	Abnormal conditions, start-up, shutdown, and malfunction of a source, process, or process equipment, operating, notification, and reporting requirements.	7/26/1995, as corrected 6/1/2007.	10/26/2007, 72 FR 60783.	
R 339.1915	Enforcement discretion in instances of excess emission resulting from malfunction, start-up, or shutdown.	5/28/2002	2/24/2003, 68 FR 8550.	
R 339.1916	Affirmative defense for excess emissions during start-up or shutdown.	5/28/2002	2/24/2003, 68 FR 8550.	
R 339.1930	Emission of carbon monoxide from ferrous cupola operations.	3/19/2002	6/1/2006, 71 FR 31093.	
Part 10. Intermittent Testing and Sampling				
R 336.2001	Performance tests by owner	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2002	Performance tests by commission	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2003	Performance test criteria	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2004	Appendix A; reference test methods; adoption of federal reference test methods.	2/22/2006	8/3/2007, 72 FR 43169.	
R 336.2005	Reference test methods for state-requested tests of delivery vessels.	2/22/2006	8/3/2007, 72 FR 43169.	
R 336.2006	Reference test method serving as alternate version of federal reference test method 25 by incorporating Byron analysis.	4/28/1993	9/7/1994, 59 FR 46182.	
R 336.2007	Alternate version of procedure L, referenced in R 336.2040(10).	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2011	Reference test method 5B	4/29/2005	6/1/2006, 71 FR 31093.	
R 336.2012	Reference test method 5C	10/15/2004	6/1/2006, 71 FR 31093.	
R 336.2013	Reference test method 5D	3/19/2002	6/1/2006, 71 FR 31093.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.2014	Reference test method 5E	10/15/2004	6/1/2006, 71 FR 31093.	
R 336.2021	Figures	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2030	Reference test method 9A	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.2031	Reference test method 9B	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.2032	Reference test method 9C	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.2033	Test methods for coke oven quench towers.	2/22/1985	6/11/1992, 57 FR 24752.	
R 336.2040	Method for determination of volatile organic compound emissions from coating lines and graphic arts lines.	3/19/2002	6/1/2006, 71 FR 31093.	All except sections (9) and (10).
R 336.2041	Recording requirements for coating lines and graphic arts lines.	4/28/1993	9/7/1994, 59 FR 46182.	
Part 11. Continuous Emission Monitoring				
R 336.2101	Continuous emission monitoring, fossil fuel-fired steam generators.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2102	Continuous emission monitoring, sulfuric acid-producing facilities.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2103	Continuous emission monitoring, fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2150	Performance specifications for continuous emission monitoring systems.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2151	Calibration gases for continuous emission monitoring systems.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2152	Cycling time for continuous emission monitoring systems.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2153	Zero and drift for continuous emission monitoring systems.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2154	Instrument span for continuous emission monitoring systems.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2155	Monitor location for continuous emission monitoring systems.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2159	Alternative continuous emission monitoring systems.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2170	Monitoring data reporting and recordkeeping.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2175	Data reduction procedures for fossil fuel-fired steam generators.	11/15/2004	6/1/2006, 71 FR 31093.	
R 336.2176	Data reduction procedures for sulfuric acid plants.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2189	Alternative data reporting or reduction procedures.	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2190	Monitoring System Malfunctions	3/19/2002	6/1/2006, 71 FR 31093.	
R 336.2199	Exemptions from continuous emission monitoring requirements.	1/19/1980	11/2/1988, 53 FR 44189.	All except section (c), which was removed 7/21/1999, 64 FR 39034.
Part 16. Organization, Operation and Procedures				
R 336.2606	Declaratory rulings requests	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2607	Consideration and disposition of declaratory rulings requests.	1/19/1980	11/2/1988, 53 FR 44189.	
Part 17. Hearings				
R 336.2701	Procedures from Administrative Procedures Act.	4/10/2000	6/28/2002, 67 FR 43548.	
R 336.2702	Service of notices and orders; appearances.	4/10/2000	6/28/2002, 67 FR 43548.	
R 336.2704	Hearing commissioner's hearings	1/19/1980	11/2/1988, 53 FR 44189.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
R 336.2705	Agency files and records, use in connection with hearings.	1/19/1980	11/2/1988, 53 FR 44189.	
R 336.2706	Commission hearings after hearing commissioner hearings.	1/19/1980	11/2/1988, 53 FR 44189.	
Part 18. Prevention of Significant Deterioration of Air Quality				
R 336.2801	Definitions	11/30/2012	4/4/2014, 79 FR 18802.	
R 336.2802	Applicability	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2803	Ambient Air Increments	11/30/2012	4/4/2014, 79 FR 18802.	
R 336.2804	Ambient Air Ceilings	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2805	Restrictions on Area Classifications	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2806	Exclusions from Increment Consumption	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2807	Redesignation	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2808	Stack Heights	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2809	Exemptions	11/30/2012	4/4/2014, 79 FR 18802.	All except for section (5)(a)(iii).
R 336.2810	Control Technology Review	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2811	Source Impact Analysis	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2812	Air Quality Models	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2813	Air Quality Analysis	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2814	Source Information	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2815	Additional Impact Analyses	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2816	Sources impacting federal class I areas; additional requirements.	11/30/2012	4/4/2014, 79 FR 18802.	
R 336.2817	Public Participation	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2818	Source Obligation	9/11/2008	9/27/2010, 75 FR 59081.	
R 336.2819	Innovative Control Technology	12/4/2006	3/25/2010, 75 FR 14352.	
R 336.2823	Actuals Plantwide Applicability Limits (PALs).	12/4/2006	3/25/2010, 75 FR 14352.	Only sections (1) through (14).
Part 19. New Source Review for Major Sources Impacting Nonattainment Areas				
R 336.2901	Definitions	6/20/2008	12/16/2013, 78 FR 76064.	
R 336.2901a	Adoption by reference	6/20/2008	12/16/2013, 78 FR 76064.	
R 336.2902	Applicability	6/20/2008	12/16/2013, 78 FR 76064.	
R 336.2903	Additional permit requirements for sources impacting nonattainment areas.	6/20/2008	12/16/2013, 78 FR 76064.	
R 336.2907	Plantwide applicability limits or PALs	6/20/2008	12/16/2013, 78 FR 76064.	
R 336.2908	Conditions for approval of a major new source review permit in a nonattainment area.	6/20/2008	12/16/2013, 78 FR 76064.	

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
Executive Orders				
1991–31	Commission of Natural Resources, Department of Natural Resources, Michigan Department of Natural Resources, Executive Reorganization.	1/7/1992	11/6/1997, 62 FR 59995.	Introductory and concluding words of issuance; Title I: General, Part A Sections 1, 2, 4 & 5 and Part B; Title III: Environmental Protection, Part A Sections 1 & 2 and Part D; Title IV: Miscellaneous, Parts A & B, Part C Sections 1, 2 & 4 and Part D.
1995–18	Michigan Department of Environmental Quality, Michigan Department of Natural Resources, Executive Reorganization.	9/30/1995	11/6/1997, 62 FR 59995.	Introductory and concluding words of issuance; Paragraphs 1, 2, 3(a) & (g), 4, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, and 18.
State Statutes				
Act 12 of 1993	Small Business Clean Air Assistance Act.	4/1/1993	6/3/1994, 59 FR 28785.	
Act 44 of 1984, as amended.	Michigan Motor Fuels Quality Act	11/13/1993	5/5/1997, 62 FR 24341.	Only 290.642, 643, 645, 646, 647, and 649.
Act 127 of 1970	Michigan Environmental Protection Act	7/27/1970	5/31/1972, 37 FR 10841.	
Act 250 of 1965, as amended.	Tax Exemption Act	1972	5/31/1972, 37 FR 10841.	
Act 283 of 1964, as amended.	Weights and Measures Act	8/28/1964	5/5/1997, 62 FR 24341.	Only 290.613 and 290.615.
Act 348 of 1965, as amended.	Air Pollution Act	1972	5/31/1972, 37 FR 10841.	
Act 348 of 1965, as amended.	Air Pollution Act	1986	2/17/1988, 53 FR 4622.	Only section 7a.
Act 348 of 1965, as amended.	Air Pollution Act	1990	3/8/1994, 59 FR 10752.	Only sections 5 and 14a.
Act 451 of 1994, as amended.	Natural Resources and Environmental Protection Act.	3/30/1995	2/10/1998, 63 FR 6650.	Only sections 324.5524 and 324.5525.
House Bill 4165	Motor Vehicle Emissions Inspection and Maintenance Program Act.	11/13/1993	6/21/1996, 61 FR 31831.	
House Bill 4898	An Act to amend section 3 of Act 44 of 1984.	11/13/1993	10/11/1994, 59 FR 51379.	
House Bill 5016	Motor Vehicle Emissions Testing Program Act.	11/13/1993	3/7/1995, 60 FR 12459.	
House Bill 5508	Amendment to Motor Fuels Quality Act, Act 44 of 1984.	4/6/2006	3/2/2007, 72 FR 4432.	
Michigan Civil Service Commission Rule 2–8.3(a)(1).	Disclosure	10/1/2013	8/31/2015, 80 FR 52399.	
Senate Bill 726	An Act to amend sections 2, 5, 6, 7, and 8 of Act 44 of 1984.	11/13/1993	9/7/1994, 59 FR 46182.	
Local Regulations				
City of Grand Rapids Ordinance 72–34.	City of Grand Rapids Air Pollution Control Regulations.	1972	5/31/1972, 57 FR 10841.	Ordinance amends sections 9.35 and 9.36 of article 4, Chapter 151 Title IX of the Code of the City of Grand Rapids.
Muskegon County Air Pollution Control Rules.	Muskegon County Air Pollution Control Rules and Regulations, as amended.	3/27/1973	5/16/1984, 49 FR 20650.	Only article 14, section J.
Wayne County Air Pollution Control Ordinance.	Wayne County Air Pollution Control Ordinance.	11/18/1985	5/13/1993, 58 FR 28359.	Only: chapters 1, 2, 3, 5 (except for the portions of section 501 which incorporate by reference the following parts of the state rules: the quench tower limit in R 336.1331, Table 31, section C.8; the deletion of the limit in R 336.1331 for coke oven coal preheater equipment; and R 336.1355), 8 (except section 802), 9, 11, 12, 13, and appendices A and D.

EPA-APPROVED MICHIGAN REGULATIONS—Continued

Michigan citation	Title	State effective date	EPA approval date	Comments
Wayne County Air Pollution Control Regulations.	Wayne County Air Pollution Control Regulations.	3/20/1969 and amended 7/22/1971.	5/6/1980, 45 FR 29790.	All except for Section 6.3 (A–H), which was removed 4/17/2015, 80 FR 21186.

(d) *EPA approved state source-specific requirements.*

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS

Name of source	Order number	State effective date	EPA Approval date	Comments
Allied Signal, Inc., Detroit Tar Plant, Wayne County.	4–1993	10/12/1994	1/17/1995, 60 FR 3346.	
American Colloid Plant	Permit 341–79	12/18/1979	9/15/1983, 48 FR 41403.	
American Colloid Plant	Permit 375–79	11/23/1979	9/15/1983, 48 FR 41403.	
Asphalt Products Company, Plant 5A, Wayne County.	5–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Clark Oil and Refining Corporation, Calhoun County.	6–1981	6/24/1982	12/13/1982, 47 FR 55678.	
Clawson Concrete Company, Plant #1, Wayne County.	6–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Conoco, Inc., Berrien County	17–1981	9/28/1981	2/17/1982, 47 FR 6828.	
Consumers Power Company, B. C. Cobb Plant, Muskegon County.	6–1979	12/10/1979	5/1/1981, 46 FR 24560.	
Consumers Power Company, J.H. Campbell Plant, Units 1 and 2, Ottawa County.	12–1984	10/1/1984	1/12/1987, 52 FR 1183.	
Continental Fibre Drum, Inc., Midland County.	14–1987	12/9/1987	6/11/1992, 57 FR 24752.	
Cummings-Moore Graphite Company, Wayne County.	7–1993	10/12/1994	1/17/1995, 60 FR 3346.	
CWC Castings Division of Textron, Muskegon County.	12–1979	2/15/1980	5/16/1984, 49 FR 20650.	
Delray Connecting Railroad Company, Wayne County.	8–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Detroit Edison Company, Boulevard Heating Plant, Wayne County.	7–1981	4/28/1981	5/4/1982, 47 FR 19133.	
Detroit Edison Company, City of St. Clair, St. Clair County.	4–1978	11/14/1978	8/25/1980, 45 FR 56344.	
Detroit Edison Company, Monroe County	9–1977	7/7/1977	12/21/1979, 44 FR 75635. (correction: 3/20/1980, 45 FR 17997).	
Detroit Edison Company, River Rouge Power Plant, Wayne County.	9–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Detroit Edison Company, Sibley Quarry, Wayne County.	10–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Detroit Water and Sewerage Department, Wastewater Treatment Plant, Wayne County.	11–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Diamond Crystal Salt Company, St. Clair County.	13–1982	9/8/1982	3/14/1983, 48 FR 9256.	
Dow Chemical Company, Midland County	12–1981	6/15/1981	3/24/1982, 47 FR 12625.	
Dow Chemical Company, West Side and South Side Power Plants, Midland County.	19–1981	7/21/1981	3/24/1982, 47 FR 12625.	Only sections A(3), B, C, D, and E.
Dundee Cement Company, Monroe County.	8–1979	10/17/1979	8/11/1980, 45 FR 53137.	
Dundee Cement Company, Monroe County.	16–1980	11/19/1980	12/3/1981, 46 FR 58673.	

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Order number	State effective date	EPA Approval date	Comments
Eagle Ottawa Leather Company, Ottawa County.	7–1994	7/13/1994	10/23/1995, 60 FR 54308.	
Edward C. Levy Company, Detroit Lime Company, Wayne County.	15–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Edward C. Levy Company, Plant #1, Wayne County.	16–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Edward C. Levy Company, Plant #3, Wayne County.	17–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Edward C. Levy Company, Plant #4 and 5, Wayne County.	19–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Edward C. Levy Company, Plant #6, Wayne County.	18–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Edward C. Levy Company, Scrap Up-Grade Facility, Wayne County.	20–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Enamalum Corporation, Oakland County	6–1994	6/27/1994	2/21/9196, 61 FR 6545.	
Ferrous Processing and Trading Company, Wayne County.	12–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Ford Motor Company, Rouge Industrial Complex, Wayne County.	13–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Ford Motor Company, Utica Trim Plant, Macomb County.	39–1993	11/12/1993	9/7/1994, 59 FR 46182.	
Ford Motor Company, Vulcan Forge, Wayne County.	14–1993	10/12/1994	1/17/1995, 60 FR 3346.	
General Motors Corporation, Buick Motor Division Complex, Flint, Genesee County.	10–1979	5/5/1980	2/10/1982, 47 FR 6013.	
General Motors Corporation, Buick Motor Division, Genesee County.	8–1982	4/2/1984	8/22/1988, 53 FR 31861.	Original order effective 7/12/1982, as altered effective 4/2/1982.
General Motors Corporation, Cadillac Motor Car Division, Wayne County.	12–1982	7/22/1982	7/5/1983, 48 FR 31022.	
General Motors Corporation, Central Foundry Division, Saginaw Malleable Iron Plant, Saginaw County.	8–1983	6/9/1983	12/13/1985, 50 FR 50907.	Supersedes paragraph 7.F of order 6–1980.
General Motors Corporation, Central Foundry Division, Saginaw Malleable Iron Plant, Saginaw County.	6–1980	7/30/1982	8/15/1983, 48 FR 36818.	Paragraph 7.F superseded by order 8–1983. Original order effective 6/3/1980, as altered effective 7/30/1982.
General Motors Corporation, Chevrolet Flint Truck Assembly, Genesee County.	10–1982	7/12/1982	7/5/1983, 48 FR 31022.	
General Motors Corporation, Chevrolet Motor Division, Saginaw Grey Iron Casting Plant and Nodular Iron Casting Plant, Saginaw County.	1–1980	4/16/1980	2/10/1982, 47 FR 6013.	
General Motors Corporation, Fisher Body Division, Fleetwood, Wayne County.	11–1982	7/22/1982	7/5/1983, 48 FR 31022.	
General Motors Corporation, Fisher Body Division, Flint No. 1, Genesee County.	9–1982	7/12/1982	7/5/1983, 48 FR 31022.	
General Motors Corporation, GM Assembly Division, Washtenaw County.	5–1983	5/5/1983	12/13/1984, 49 FR 5345.	
General Motors Corporation, Hydra-Matic Division, Washtenaw County.	3–1982	6/24/1982	3/4/1983, 48 FR 9256.	
General Motors Corporation, Oldsmobile Division, Ingham County.	4–1983	5/5/1983	12/13/1984, 49 FR 5345.	
General Motors Corporation, Warehousing and Distribution Division, Genesee County.	18–1981	7/28/1983	5/16/1984, 49 FR 20649.	Original order effective 12/1/1981, as altered effective 7/28/1983.
Hayes-Albion Corporation Foundry, Calhoun County.	2–1980	2/2/1982	9/15/1983, 48 FR 41403.	Original order effective 2/15/1980, as altered effective 2/2/1982.
J. H. Campbell Plant, Ottawa County	5–1979	2/6/1980	12/24/1980, 45 FR 85004. (correction: 3/16/1981 46 FR 16895).	Original order effective 6/25/1979, as altered effective 2/6/1980.
Keywell Corporation, Wayne County	31–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Lansing Board of Water and Light	4–1979	5/23/1979	12/17/1980, 45 FR 82926.	All except sections 7 A, B, C1, D, E, F, and section 8.
Marathon Oil Company, Muskegon County.	16–1981	7/31/1981	2/22/1982, 47 FR 7661.	
Marblehead Lime Company, Brennan Avenue Plant, Wayne County.	21–1993	10/12/1994	1/17/1995, 60 FR 3346.	

EPA-APPROVED MICHIGAN SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Order number	State effective date	EPA Approval date	Comments
Marblehead Lime Company, River Rouge Plant, Wayne County.	22–1993	10/12/1994	1/17/1995, 60 FR 3346.	
McLouth Steel Company, Trenton Plant, Wayne County.	23–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Michigan Foundation Company, Cement Plant, Wayne County.	24–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Michigan Foundation Company, Sibley Quarry, Wayne County.	25–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Monitor Sugar Company, Bay County	21–1981	10/29/1981	5/19/1982, 47 FR 21534.	
Morton International, Inc., Morton Salt Division, Wayne County.	26–1993	10/12/1994	1/17/1995, 60 FR 3346.	
National Steel Corporation, Great Lakes Division, Wayne County.	27–1993	10/12/1994	1/17/1995, 60 FR 3346.	
National Steel Corporation, Transportation and Materials Handling Division, Wayne County.	28–1993	10/12/1994	1/17/1995, 60 FR 3346.	
New Haven Foundry, Inc., Macomb County.	12–1980	8/14/1980	2/10/1982, 47 FR 6013.	
Northern Michigan Electric Cooperative Advance Steam Plant, Charlevoix County.	16–1979	1/10/1980	7/2/1981, 46 FR 34584.	
Packaging Corporation of America, Manistee County.	23–1984	7/8/1985	5/4/1987, 52 FR 16246.	
Peerless Metal Powders, Incorporated, Wayne County.	29–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Rouge Steel Company, Wayne County	30–1993	10/12/1994	1/17/1995, 60 FR 3346.	
S. D. Warren Company, Muskegon	9–1979	10/31/1999	1/27/1981, 46 FR 8476.	
St. Marys Cement Company, Wayne County.	32–1993	10/12/1994	1/17/1995, 60 FR 3346.	
Traverse City Board of Light and Power, Grand Traverse County.	23–1981	1/4/1982	5/19/1982, 47 FR 21534.	
Union Camp Corporation, Monroe County	14–1979	1/3/1980	5/14/1981, 46 FR 26641.	
United States Gypsum Company, Wayne County.	33–1993	10/12/1994	1/17/1995, 60 FR 3346.	
VCF Films, Inc., Livingston County	3–1993	6/21/1993	9/7/1994, 59 FR 46182.	
Woodbridge Corporation, Washtenaw County.	40–1993	11/12/1993	9/7/1994, 59 FR 46182.	
Wyandotte Municipal Power Plant, Wayne County.	34–1993	10/12/1994	1/17/1995, 60 FR 3346.	

(e) *EPA approved nonregulatory and quasi-regulatory provisions.*

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
Implementation plan for the control of suspended particulates, sulfur oxides, carbon monoxide, hydrocarbons, nitrogen oxides, and photochemical oxidants in the state of Michigan.	Statewide	2/3/1972	5/31/1972, 37 FR 10841.	Sections include: Air quality control regions, legal authority, air quality data, emission data, control strategy, control regulations, compliance plans and schedules, prevention of air pollution emergency episodes, air quality surveillance program, control of emission sources, organization and resources, and intergovernmental cooperation.
Reevaluation of control strategies	Berrien and Ingham Counties.	3/3/1972	10/28/1972, 37 FR 23085.	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
Reasons and justifications	Statewide	7/12/1972	10/28/1972, 37 FR 23085.	Concerning general requirements of control strategy for nitrogen dioxide, compliance schedules, and review of new sources and modifications.
Compliance schedules	Alpena, Baraga, Charlevoix, Huron, Ionia, Marquette, Midland, Muskegon, Oakland, Otsego, and St. Clair Counties.	5/4/1973, 9/19/1973, 10/23/1973, and 12/13/1973.	8/5/1974, 39 FR 28155.	
Compliance schedules	Allegan, Eaton, Emmet, Genesee, Huron, Ingham, Macomb, Monroe, Ottawa, Saginaw, and St. Clair Counties.	2/16/1973 and 5/4/1973.	9/10/1974, 39 FR 32606.	
Carbon monoxide control strategy	Saginaw area	4/25/1979	5/6/1980, 45 FR 29790.	
Transportation control plans	Detroit urban area	4/25/1979, 7/25/1979, 10/12/1979, 10/26/1979, 11/8/1979, 12/26/1979.	6/2/1980, 45 FR 37188.	
Ozone control strategy for rural ozone nonattainment areas.	Marquette, Muskegon, Gratiot, Midland, Saginaw, Bay, Tuscola, Huron, Sanilac, Ottawa, Ionia, Shiawassee, Lapeer, Allegan, Barry, Van Buren, Kalamazoo, Calhoun, Jackson, Berrien, Cass, Branch, Hillsdale, and Lenawee Counties.	4/25/1979, 7/25/1979, 10/12/1979, 10/26/1979, 11/8/1979, 12/26/1979.	6/2/1980, 45 FR 37188.	
Transportation control plan	Niles	4/25/1979, 10/26/1979, 11/8/1979, 12/26/1979, 8/4/1980, and 8/8/1980.	4/17/1981, 46 FR 22373.	
Total suspended particulate studies	Detroit area	3/7/1980 and 4/21/1981.	2/18/1982, 47 FR 7227.	
Lead plan	Statewide	12/27/1979 and 2/9/1981.	4/13/1982, 47 FR 15792.	
Reduction in size of Detroit ozone area	Wayne, Oakland, Macomb, Livingston, Monroe, St. Clair, and Washtenaw Counties.	9/1/1982	7/7/1983, 48 FR 31199.	
Information relating to order 8–1982: letter dated 9/6/84 from Michigan Department of Natural Resources to EPA.	Genesee County	9/6/1984	8/22/1988, 53 FR 31861.	
Information relating to order 14–1987: letter dated 12/17/87 from Michigan Department of Natural Resources to EPA.	Midland County	12/17/1987	10/3/1989, 54 FR 40657.	
Appendices A and D of Wayne County Air Pollution Control Ordinance.	Wayne County	10/10/1986	5/13/1993, 58 FR 28359.	Effective 11/18/1985.

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
Information supporting emissions statement program.	Statewide	11/16/1992, 10/25/1993, and 2/7/1994.	3/8/1994, 59 FR 10752.	1991 Michigan air pollution reporting forms, reference tables, and general instructions.
I/M program	Grand Rapids and Muskegon areas.	11/12/1993 and 7/19/1994.	10/11/1994, 59 FR 51379.	Includes: document entitled "Motor Vehicle Emissions Inspection and Maintenance Program for Southeast Michigan, Grand Rapids MSA, and Muskegon MSA Moderate Nonattainment Areas," RFP, and supplemental materials.
PM–10 implementation plan	Wayne County	6/11/1993, 4/7/1994, and 10/14/1994.	1/17/1995, 60 FR 3346.	Reasonable further progress, RACM, contingency measures, 1985 base year emission inventory.
General conformity	Statewide	11/29/1994	12/18/1996, 61 FR 66607.	
Transportation conformity	Statewide	11/24/1994	12/18/1996, 61 FR 66609.	
7.8 psi Reid vapor pressure gasoline-supplemental materials.	Wayne, Oakland, Macomb, Washtenaw, Livingston, St. Clair, and Monroe Counties.	5/16/1996, 1/5/1996, and 5/14/1996.	5/5/1997, 62 FR 24341.	Includes: letter from Michigan Governor John Engler to Regional Administrator Valdas Adamkus, dated 1/5/1996, letter from Michigan Director of Environmental Quality Russell Harding to Regional Administrator Valdas Adamkus, dated 5/14/1996, and state report entitled "Evaluation of Air Quality Contingency Measures for Implementation in Southeast Michigan".
Regional Haze Plan	Statewide	11/5/2010	12/3/2012, 77 FR 71533.	Addresses all regional haze plan elements except BART emission limitations for EGUs, St. Marys Cement, Escanaba Paper, and Tilden Mining.
Attainment Demonstrations				
1-hour ozone attainment demonstrations and transportation control plans.	Flint, Lansing and Grand Rapids urban areas.	4/25/1979, 7/25/1979, 10/12/1979, 10/26/1979, 11/8/1979, 12/26/1979.	6/2/1980, 45 FR 37188.	
Carbon monoxide and 1-hour ozone attainment demonstrations and I/M program.	Detroit urban area	4/25/1979, 7/25/1979, 10/12/1979, 10/26/1979, 11/8/1979, 12/26/1979, 3/20/1980, 5/12/1980, and 5/21/1980.	6/2/1980, 45 FR 37192.	
Emissions Inventories				
1-hour ozone 1990 base year	Grand Rapids (Kent and Ottawa Counties) and Muskegon areas.	1/5/1993	7/26/1994, 59 FR 37944.	
1-hour ozone 1990 base year	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	1/5/1993 and 11/29/1993.	3/7/1995, 60 FR 12459.	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
1-hour ozone 1990 base year	Flint (Genesee County) and Saginaw-Midland-Bay City (Bay, Midland, and Saginaw Counties).	5/9/2000	11/13/2000, 65 FR 67629.	
1-hour ozone 1991 base year	Allegan County	9/1/2000 and 10/13/2000.	11/24/2000, 65 FR 70490.	
1997 8-hour ozone 2005 base year	Detroit-Ann Arbor (Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	3/6/2009	6/29/2009, 74 FR 30950.	
1997 annual $PM_{2.5}$ 2005 base year	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	6/13/2008	11/6/2012, 77 FR 66547.	
Infrastructure				
Public availability of emissions data	Statewide	7/24/1972	10/28/1972, 37 FR 23085.	
Ambient air quality monitoring, data reporting, and surveillance provisions.	Statewide	12/19/1979	3/4/1981, 46 FR 15138.	
Provisions addressing sections 110(a)(2)(K), 126(a)(2), 127, and 128 of the Clean Air Act as amended in 1977.	Statewide	4/25/1979 and 10/12/1979.	6/5/1981, 46 FR 30082.	Concerns permit fees, interstate pollution, public notification, and state boards.
Section 121, intergovernmental consultation.	Statewide	5/25/1979	11/27/1981, 46 FR 57893.	
Section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone NAAQS.	Statewide	12/6/2007, 7/19/2008, and 4/6/2011.	7/13/2011, 76 FR 41075.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) infrastructure requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	12/6/2007, 7/19/2008, and 4/6/2011.	7/13/2011, 76 FR 41075.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) infrastructure requirements for the 2006 24-hour $PM_{2.5}$ NAAQS.	Statewide	8/15/2011, 7/9/2012, 7/10/2014.	10/20/2015, 80 FR 63451.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility protection requirements of (D)(i)(II).
Section 110(a)(2) infrastructure requirements for the 2008 lead (Pb) NAAQS.	Statewide	4/3/2012, 8/9/2013, 7/10/2014.	10/20/2015, 80 FR 63451.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	7/10/2014	10/13/2015, 80 FR 61311.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2010 nitrogen dioxide (NO_2) NAAQS.	Statewide	7/10/2014	10/13/2015, 80 FR 61311.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on the visibility portion of (D)(i)(II).
Section 110(a)(2) Infrastructure Requirements for the 2008 sulfur dioxide (SO_2) NAAQS.	Statewide	7/10/2014	10/13/2015, 80 FR 61311.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
Section 110(a)(2) Infrastructure Requirements for the 2012 particulate matter ($PM_{2.5}$) NAAQS.	Statewide	7/10/2014	10/13/2015, 80 FR 61311.	Approved CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). We are not taking action on (D)(i)(I) and the visibility portion of (D)(i)(II).
Maintenance Plans				
Carbon monoxide	Detroit area (portions of Wayne, Oakland, and Macomb Counties).	3/18/1999	6/30/1999, 64 FR 35017.	
Carbon monoxide	Detroit area (portions of Wayne, Oakland, and Macomb Counties).	12/19/2003	1/28/2005, 64 FR 35017.	Revision to motor vehicle emission budgets.
1-hour ozone	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	11/12/1994	3/7/1995, 60 FR 12459.	
1-hour ozone	Grand Rapids area	3/9/1995	6/21/1996, 61 FR 31831.	
1-hour ozone	Muskegon County	3/9/1995	8/30/2000, 65 FR 52651.	
1-hour ozone	Allegan County	9/1/2000 and 10/13/2000.	11/24/2000, 65 FR 70490.	
1-hour ozone	Flint (Genesee County) and Saginaw-Midland-Bay City (Bay, Midland, and Saginaw Counties).	5/9/2000	11/13/2000, 65 FR 67629.	
1-hour ozone	Muskegon County	3/22/2001	8/6/2001, 66 FR 40895.	Revision to motor vehicle emission budgets.
1-hour ozone update	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	12/19/2003	5/20/2005, 70 FR 29202.	
1997 8-hour ozone	Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Benzie County, Huron County, and Mason County.	5/9/2006, 5/26/2006, and 8/25/2006.	5/16/2007, 72 FR 27425.	

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
1997 8-hour ozone	Flint (Genesee and Lapeer Counties), Muskegon (Muskegon County), Benton Harbor (Berrien County), and Cass County.	6/13/2006, 8/25/2006, and 11/30/2006.	5/16/2007, 72 FR 27425.	
1997 8-hour ozone	Detroit-Ann Arbor (Lenawee, Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	3/6/2009	6/29/2009, 74 FR 30950.	
Particulate matter	Macomb, Oakland, Wayne and Monroe Counties.	6/27/1974 and 10/18/1974.	6/2/1975, 40 FR 23746.	
PM–10	Wayne County	7/24/1995	8/5/1996, 61 FR 40516.	
1997 Annual $PM_{2.5}$	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	7/05/2011	8/29/2013, 78 FR 53274.	
2006 24-Hour $PM_{2.5}$	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	7/05/2011	8/29/2013, 78 FR 53274.	
Negative Declarations				
Negative declarations	Wayne, Oakland and Macomb Counties.	10/10/1983, 5/17/1985, and 6/12/1985.	11/24/1986, 51 FR 42221.	Includes large petroleum dry cleaners, high-density polyethylene, polypropylene, and polystyrene resin manufacturers, and synthetic organic chemical manufacturing industry—oxidation.
Negative declarations	Detroit-Ann Arbor Area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw and Wayne Counties) Grand Rapids Area (Kent and Ottawa Counties), and Muskegon County.	3/30/1994	9/7/1994, 59 FR 46182.	Includes: Large petroleum dry cleaners, SOCMI air oxidation processes, high-density polyethylene and polypropylene resin manufacturing and pneumatic rubber tire manufacturing.

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS—Continued

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
Section 182(f) NO_X Exemptions				
1-hour ozone	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	11/12/1993	8/10/1994, 59 FR 40826.	
1-hour ozone	Clinton, Ingham, Eaton, and Genesee Counties.	7/1/1994 and 7/8/1994.	4/27/1995, 60 FR 20644.	
1-hour ozone	Kent, Ottawa, Muskegon, Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Gratiot, Genesee, Hillsdale, Ingham, Ionia, Jackson, Kalamazoo, Lenawee, Midland, Montcalm, St. Joseph, Saginaw, Shiawassee, and Van Buren Counties.	7/13/1994	1/26/1996, 61 FR 2428.	
1-hour ozone	Muskegon County	11/22/1995	9/26/1997, 62 FR 50512.	
1997 8-hour ozone	Grand Rapids (Kent and Ottawa Counties), Kalamazoo-Battle Creek (Calhoun, Kalamazoo, and Van Buren Counties), Lansing-East Lansing (Clinton, Eaton, and Ingham Counties), Benzie County, Huron County and Mason County.	1/17/2015	6/6/2006, 71 FR 32448.	

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0302; FRL–9948–15–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve portions of a November 20, 2015, State Implementation Plan (SIP) submittal from Missouri concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Missouri are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X) and one of CSAPR's two Federal trading programs for annual emissions of sulfur

dioxide (SO_2). This action approves Missouri's adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Missouri units of CSAPR allowances for annual NO_X emissions and annual SO_2 emissions for 2017 and later years. EPA is approving the SIP revision because it meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of CSAPR's Federal trading programs for annual NO_X emissions and annual SO_2 emissions as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those trading programs (as modified by the SIP revision) remain in place. The approval is being issued as a direct final rule without a prior proposed rule because EPA views it as uncontroversial and does not anticipate adverse comment. EPA is not acting at this time on the portion of Missouri's SIP submittal concerning allocations of CSAPR allowances for ozone-season NO_X emissions.

DATES: This direct final rule will be effective August 12, 2016, without further notice, unless EPA receives adverse comment by July 28, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0302, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219; telephone number: (913) 551–7041; email address: *gonzalez.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Background on CSAPR and CSAPR-Related SIP Revisions
III. Conditions for Approval of CSAPR-Related SIP Revisions
IV. Missouri's SIP Submittal and EPA's Analysis
  A. Missouri's SIP Submittal
  B. EPA's Analysis of Missouri's Submittal
  1. Timeliness and Completeness of SIP Submittal
  2. Methodology Covering All Allowances Potentially Requiring Allocation
  3. Assurance That Total Allocations Will Not Exceed the State Budget
  4. Timely Submission of State-Determined Allocations to EPA
  5. No Changes to Allocations Already Submitted to EPA or Recorded
  6. No Other Substantive Changes to Federal Trading Program Provisions
V. EPA's Action on Missouri's Submittal
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

I. What is being addressed in this document?

EPA is taking direct final action to approve the portions of a November 20, 2015, SIP submittal from Missouri concerning allocations of allowances used in the CSAPR[1] Federal trading programs for annual emissions of NO_X and SO_2. Large electricity generating units in Missouri are subject to CSAPR FIPs that require the units to participate in the Federal CSAPR NO_X Annual Trading Program and the Federal CSAPR SO_2 Group 1 Trading Program.[2] Each of CSAPR's Federal trading programs includes default provisions governing the allocation among participating units of emission allowances used for compliance under that program. CSAPR also provides a process for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in this action incorporates into Missouri's SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Missouri units of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 1 allowances issued for the control periods in 2017 and later years. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provisions of the CSAPR NO_X Annual Trading Program or the CSAPR SO_2 Group 1 Trading Program as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those programs (as modified by this SIP revision) remain in place.

Large electricity generating units in Missouri are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR NO_X Ozone Season Trading Program. While Missouri's SIP submittal also seeks to replace the default allocations of CSAPR NO_X Ozone Season allowances to Missouri units, EPA is not acting on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on the CSAPR NO_X Ozone Season Trading Program as applied to Missouri units, and the FIP requiring the units to participate in that program remains in place.

Section II of this document summarizes relevant aspects of the CSAPR Federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Missouri's SIP submittal, and Section V sets forth EPA's action on the submittal.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the

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[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011), (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

[2] EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706, 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires twenty-eight Eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three National Ambient Air Quality Standards (NAAQS): The 1997 ozone NAAQS, the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS. The emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO_2, annual NO_X, and/or ozone-season NO_X by each covered state's large electricity generating units. The budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four Federal emissions trading programs: A program for annual NO_X emissions, a program for ozone-season NO_X emissions, and two geographically separate programs for annual SO_2 emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs.[3] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading program for ozone-season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the Federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. A state whose units are subject to multiple CSAPR FIPs and Federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[4] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in Section III below. Under the first alternative—an "abbreviated" SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading program for the state.[5] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units.

Under the second alternative—a "full" SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[6] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.[7] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR Federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[8] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[9]

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.[10] However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. None of the CSAPR emissions budgets applicable to Missouri units has been remanded.[11]

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[3] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR Federal trading programs or integrated state trading programs.

[4] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3); § 52.39(d), (g).

[5] § 52.38(a)(4), (b)(4); § 52.39(e), (h).

[6] § 52.38(a)(5), (b)(5); § 52.39(f), (i).

[7] § 52.38(a)(6), (b)(6); § 52.39(j).

[8] § 52.38(a)(5)(iv) and (v), (a)(6), (b)(5)(v) and (vi), (b)(6); § 52.39(f)(4) and (5), (i)(4) and (5), (j).

[9] § 52.38(a)(7), (b)(7); § 52.39(k).

[10] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would amend the Phase 2 emissions budget applicable to Missouri units under the CSAPR NO_X Ozone Season Trading Program and would make technical corrections and nomenclature changes throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR Federal trading program regulations for annual NO_X, ozone-season NO_X, and SO_2 emissions at 40 CFR part 97.[12]

III. Conditions for Approval of CSAPR-Related SIP Revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR Federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.[13] (The SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and Federal trading program with a SIP and a substantively identical state trading program integrated with the Federal trading program.) The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each Federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the Federal program's default allocations to existing units[14] at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the Federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.[15] In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the Federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing any the disposition of otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.[16]
- *Assurance that total allocations will not exceed the state budget.* For each Federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.[17] Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.
- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.[18] Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

Units	Year of the control period	Deadline for submission to EPA of allocations or auction results
Existing	2017 and 2018	June 1, 2016.
	2019 and 2020	June 1, 2017.
	2021 and 2022	June 1, 2018.
	2023 and later years	June 1 of the fourth year before the year of the control period.
Other	All years	July 1 of the year of the control period.

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the Federal trading program regulations.[19]
- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program

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[11] Litigation concerning EPA's supplemental rule establishing the requirement for Missouri units to participate in the CSAPR NO_X Ozone Season Trading Program is currently being held in abeyance. *Public Service Co. of Oklahoma* v. *EPA*, No. 12–1023 (D.C. Cir. filed January 13, 2012).

[12] 80 FR 75706, 75710, 75757 (December 3, 2015).

[13] 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

[14] In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA's default allocations to existing units is posted at *www.epa.gov/crossstaterule/techinfo.html*.

[15] § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

[16] *See* §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

[17] § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

[18] § 52.38(a)(4)(i)(B) and (C), (a)(5)(i)(B) and (C), (b)(4)(ii)(B) and (C), (b)(5)(ii)(B) and (C); § 52.39(e)(1)(ii) and (iii), (f)(1)(ii) and (iii), (h)(1)(ii) and (iii), (i)(1)(ii) and (iii).

[19] § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

applicability as described below.[20] Any new definitions adopted in the SIP revision (in addition to the Federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.[21]

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO_X Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.[22]
- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.[23]

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the Federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.
- *Only non-substantive substitutions for the term "State."* The SIP revision may substitute the name of the state for the term "State" as used in the Federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.[24]
- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the Federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.[25]

IV. Missouri's SIP Submittal and EPA's Analysis

A. Missouri's SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Missouri unlawfully affected other states' ability to attain or maintain the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.[26] In a supplemental rulemaking, EPA determined that air pollution transported from Missouri also unlawfully affected other states' ability to attain and maintain the 1997 ozone NAAQS.[27] Missouri units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO_X Annual Trading Program, the CSAPR SO_2 Group 1 Trading Program, and the CSAPR NO_X Ozone Season Trading Program.[28]

On November 20, 2015, Missouri submitted to EPA an abbreviated SIP revision that, if all portions were approved, would replace the default allowance allocation provisions of all three CSAPR trading programs for the state's EGUs for the control periods in 2017 and later years with provisions establishing state-determined allocations for those control periods but that would leave the corresponding CSAPR FIPs and all other provisions of the trading programs in place. The SIP submittal generally consists of three duly adopted state rules, 10 CSR 10–6.372 (Cross-State Air Pollution Rule Annual NO_X Trading Allowance Allocations), 10 CSR 10–6.374 (Cross-State Air Pollution Rule Ozone Season NO_X Trading Allowance Allocations), and 10 CSR 10–6.376 (Cross-State Air Pollution Rule Annual SO_2 Trading Allowances Allocations). The three state rules are substantively identical except that each addresses a different CSAPR Federal trading program and allocates a different total quantity of allowances. Each rule contains a table establishing specific amounts of allowances to be allocated for each control period in 2017 and later years to specified Missouri electricity generating units under the applicable CSAPR trading program. Each rule also establishes a NUSA for the applicable program for each control period and sets forth a procedure for allocating allowances from the NUSA to qualifying Missouri units.

The SIP revision was submitted to EPA by a letter from the Director of the Missouri Air Pollution Control Program. The letter and its enclosures describe steps taken by Missouri to provide public notice prior to adoption of the state rules.

In this rule, EPA is taking action on the portions of Missouri's SIP submittal relating to the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 1 Trading Program. EPA is not taking action at this time on the portion of the SIP submittal relating to the CSAPR NO_X Ozone Season Trading Program. As noted in section II above, EPA has proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. The proposal would reduce the ozone-season NO_X emissions budgets for control periods in 2017 and later years for a number of states, including Missouri. Action on the portion of Missouri's SIP submittal addressing allocations of ozone-season NO_X allowances would be premature while the proposed update is pending because there is a foreseeable potential conflict between the total amount of allowances that would be allocated to Missouri units under Missouri's state-determined allocation provisions, which are based on Missouri's current budget, and the total amount of allowances that could permissibly be allocated to the units under a final updated budget.

EPA has previously approved a separate Missouri SIP revision replacing the default allowance allocation provisions of the CSAPR NO_X Annual Trading Program and the CSAPR NO_X Ozone Season Trading Program for Missouri existing units for the control period in 2016.[29]

B. EPA's Analysis of Missouri's Submittal

As described in section IV.A above, at this time EPA is taking action on the portions of Missouri's SIP submittal relating to the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 1 Trading Program but not the portion of the SIP submittal relating to the CSAPR NO_X Ozone Season Trading Program. The analysis discussed in this section addresses only the portions of Missouri's SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittal on which EPA is taking action as "the submittal" or "the SIP revision" without repeating the qualification that at this time EPA is analyzing and acting on only portions of the SIP submittal.

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[20] § 52.38(a)(4), (a)(5), (b)(4), (b)(5); § 52.39(e), (f), (h), (i).

[21] § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

[22] § 52.38(b)(4)(i), (b)(5)(i).

[23] § 52.38(b)(4), (b)(5).

[24] § 52.38(a)(5)(iii), (b)(5)(iv); § 52.39(f)(3), (i)(3).

[25] § 52.38(a)(5)(iv), (b)(5)(v); § 52.39(f)(4), (i)(4).

[26] 76 FR 48208, 48213 (August 8, 2011).

[27] 76 FR 80760, 80763 (December 27, 2011).

[28] 40 CFR 52.38(a)(2), (b)(2); § 52.39(b); § 52.1326; § 52.1327.

[29] 80 FR 51131 (August 24, 2015).

1. Timeliness and Completeness of SIP Submittal

Missouri's SIP revision seeks to establish state-determined allocations of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 1 allowances for the control periods in 2017 and later years. Under 40 CFR 52.38(a)(4)(i)(B) and 52.39(e)(1)(ii), the deadline for submission of state-determined allocations for the 2017 and 2018 control periods is June 1, 2016, which under §§ 52.38(a)(4)(ii) and 52.39(e)(2) makes December 1, 2015, the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Missouri submitted its SIP revision to EPA by a letter dated and delivered electronically on November 20, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Missouri's SIP revision was timely submitted and meets the applicable completeness criteria, it meets the condition under 40 CFR 52.38(a)(4)(ii) and 52.39(e)(2) for timely submission of a complete SIP revision.

2. Methodology Covering All Allowances Potentially Requiring Allocation

Paragraphs 10 CSR 10–6.372(3) and 10 CSR 10–6.376(3) of the Missouri rules provide that the allowance allocation methodology adopted by Missouri in the SIP revision replaces the provisions of 40 CFR 97.411(a) and 97.611(a), respectively, thereby addressing all allowances that under the default allocation provisions for the Federal trading programs would be allocated to units considered existing units for CSAPR purposes (prior to allocation of any allowances set aside during the initial allocation process). The same Missouri rule paragraphs also provide that the state's allocation methodology replaces the provisions of 40 CFR 97.411(b)(1) and 97.412(a) and the provisions of 40 CFR 97.611(b)(1) and 97.612(a), respectively, thereby addressing allocation of allowances in the NUSAs established for Missouri under the Federal trading programs. The CSAPR Federal trading program regulations do not establish any Indian country NUSAs for Missouri. The allocations provisions in the Missouri rules therefore enable Missouri's SIP revision to meet the condition under 40 CFR 52.38(a)(4)(i) and 52.39(e)(1) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

3. Assurance That Total Allocations Will Not Exceed the State Budget

Paragraphs 10 CSR 10–6.372(3)(A)1. and 10 CSR 10–6.376(3)(A)1. of the Missouri rules provide for allowance allocations under each trading program to be made to specified units (including all Missouri units considered existing units for CSAPR purposes) in fixed amounts as set forth in tables referred to as "Table 1" in the state rules. The totals of the allowances allocated for each control period according to the two tables (45,818 CSAPR NO_X Annual allowances and 160,959 CSAPR SO_2 Group 1 allowances) are less than Missouri's state budgets for the control periods in 2017 and later years under the respective trading programs (48,743 CSAPR NO_X Annual allowances and 165,941 CSAPR SO_2 Group 1 allowances).[30] Paragraphs 10 CSR 10–6.372(3)(B)3.B. and 10 CSR 10–6.376(3)(B)3.B. of the Missouri rules establish NUSAs for each trading program, allocating to each NUSA for each control period an amount of allowances equal to the state budget for the trading program minus the total amount of allowances allocated according to the table for that trading program. As noted above, the CSAPR Federal trading program regulations do not establish Indian country NUSAs for Missouri. The only allowances available for allocation to Missouri units are therefore allowances allocated under the Missouri rules, and the only such allowances, which necessarily sum to the state budgets, are the allowances allocated according to the tables and the allowances allocated from the NUSAs. EPA has not yet allocated or recorded CSAPR allowances for the control periods in 2017 or later years. The allocation methodology in Missouri's SIP revision therefore meets the condition under 40 CFR 52.38(a)(4)(i)(A) and 52.39(e)(1)(i) that, for each trading program, the total amount of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

4. Timely Submission of State-Determined Allocations to EPA

The allocation tables in the Missouri rules establish the primary allowance allocations for all Missouri units that are considered existing units for CSAPR purposes. Paragraphs 10 CSR 10–6.372(3)(A)1.A. through D. and 10 CSR 10–6.376(3)(A)1.A. through D. of the Missouri rules provide for the state-determined allocations established according to the tables to be submitted to EPA by the following deadlines: Allocations for the control periods in 2017 and 2018, by June 1, 2016; allocations for the control periods in 2019 and 2020, by June 1, 2017; allocations for the control periods in 2021 and 2022, by June 1, 2018; and allocations for later control periods, by June 1 of the fourth year before the year of the control period. These submission deadlines match the deadlines under 40 CFR 52.38(a)(4)(i)(B) and 52.39(e)(1)(ii) described in Section III above for allocations to existing units. Paragraphs 10 CSR 10–6.372(3)(B)1. and 10–6.376(3)(B)1. of the Missouri rules provide for the state-determined allowance allocations to other units from the NUSAs for each control period to be submitted to EPA by July 1 of the year of the control period. These submission deadlines match the submission deadlines under 40 CFR 52.38(a)(4)(i)(C) and 52.39(e)(1)(iii) described in section III above for allocations to other units. Missouri's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(4)(i)(B) and (C) and 52.39(e)(1)(ii) and (iii) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No Changes to Allocations Already Submitted to EPA or Recorded

The Missouri rules include no provisions allowing alteration of allocations after the allocation amounts have been provided to EPA and no provisions allowing alteration of any allocations made and recorded by EPA under the Federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(4)(i)(D) and 52.39(e)(1)(iv).

6. No Other Substantive Changes to Federal Trading Program Provisions

Besides the provisions addressing allowance allocations discussed above, the Missouri rules contain certain definitions. Paragraphs 10 CSR 10–6.372(2)(A) and 10 CSR 10–6.376(2)(A) incorporate by reference the Federal trading program definitions in 40 CFR 97.402 and 97.403 and the definitions in 40 CFR 97.602 and 97.603, respectively. Paragraphs 10 CSR 6.372(2)(B) and 10 CSR 10–6.376(2)(B) define a single term which is not defined in the Federal trading program regulations (“notification”), and paragraphs 10 CSR 6.372(2)(C) and 10 CSR 10–6.376(2)(C) refer to another Missouri rule for definitions of otherwise undefined terms. These definition provisions do not make substantive changes to the Federal trading program provisions.[31] EPA therefore determines that Missouri's SIP revision meets the condition under 40 CFR 52.38(a)(4) and 52.39(e) of making no substantive changes to the Federal trading program regulations beyond the provisions addressing allowance allocations.

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[30] 40 CFR 97.410(a)(11)(iv), 97.610(a)(7)(iv).

V. EPA's Action on Missouri's Submittal

EPA is taking direct final action to approve the portions of Missouri's November 20, 2015, SIP submittal concerning allocations to Missouri units of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 1 allowances for the control periods in 2017 and later years. The approved revision adopts into the SIP the rules codified in Missouri's regulations at 10 CSR 10–6.372 (Cross-State Air Pollution Rule Annual NO_X Trading Allowance Allocations) and 10 CSR 10–6.376 (Cross-State Air Pollution Rule Annual SO_2 Trading Allowances Allocations). Following this approval, allocations of CSAPR NO_X Annual allowances to Missouri units for the control periods in 2017 and later years will be made according to the provisions of Missouri's SIP instead of CSAPR's default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a), and allocations of CSAPR SO_2 Group 1 allowances to Missouri units for the control periods in 2017 and later years will be made according to the provisions of Missouri's SIP instead of CSAPR's default allocation provisions at 40 CFR 97.611(a), 97.611(b)(1), and 97.612(a). Approval of this SIP revision does not alter any provision of the CSAPR NO_X Annual Trading Program or the CSAPR SO_2 Group 1 Trading Program as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those programs (as modified by this SIP revision) remain in place. EPA is approving the indicated portions of the SIP submittal because they meet the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV above.

Large electricity generating units in Missouri are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR NO_X Ozone Season Trading Program. While Missouri's SIP submittal also seeks to replace the default allocations of CSAPR NO_X Ozone Season allowances to Missouri units, EPA is not acting on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on the CSAPR NO_X Ozone Season Trading Program as applied to Missouri units, and the FIP requiring the units to participate in that program remains in place.

VI. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Missouri Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

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[31] EPA has proposed to make certain technical corrections to the CSAPR FIP and Federal trading program regulations in order to more accurately reflect EPA's intent as described in the CSAPR rulemaking and has also proposed to replace “TR” with “CSAPR” throughout the regulations (for example, “TR NO_X Annual unit” would become “CSAPR NO_X Annual unit”). *See* 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA's interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Missouri rules, EPA would interpret the Missouri rules as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR Federal regulations would explicitly provide that terms that include “CSAPR” encompass otherwise identical terms in approved SIP revisions that include “TR”.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA-Missouri

■ 2. In § 52.1320:

■ a. Revise the section heading.

■ b. In the table in paragraph (c), under Chapter 6, add entries "10–6.372" and "10–6.376" in numerical order.

The revisions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
		Missouri Department of Natural Resources		
*	*	*	*	*
		Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri		
*	*	*	*	*
10–6.372	Cross-State Air Pollution Rule Annual NO_X Trading Allowance Allocations.	12/30/15	6/28/16 [Insert ***Federal Register*** citation].	
10–6.376	Cross-State Air Pollution Rule Annual SO_2 Trading Allowance Allocations.	12/30/15	6/28/16 [Insert ***Federal Register*** citation].	
*	*	*	*	*

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[FR Doc. 2016–15048 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[EPA–HQ–OW–2014–0598; FRL–9947–87–OW]

RIN 2040–AF35

Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is publishing a final Clean Water Act (CWA) regulation that protects human health, the environment and the operational integrity of publicly owned treatment works (POTWs) by establishing pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas (UOG) extraction facilities to POTWs. UOG extraction wastewater can be generated in large quantities and contains constituents that are potentially harmful to human health and the environment. Certain UOG extraction wastewater constituents are not typical of POTW influent wastewater and can be discharged, untreated, from the POTW to the receiving stream; can disrupt the operation of the POTW (*e.g.*, by inhibiting biological treatment); can accumulate in biosolids (sewage sludge), limiting their beneficial use; and can facilitate the formation of harmful disinfection by-products (DBPs). Based on the information collected by EPA, the requirements of this final rule reflect current industry practices for onshore unconventional oil and gas extraction facilities. Therefore, EPA does not project that the final rule will impose any costs or lead to pollutant removals, but will ensure that current industry best practice is maintained over time.

DATES: The final rule is effective on August 29, 2016. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on July 12, 2016. Under section 509(b)(1) of the CWA, judicial review of this regulation can be had only by filing a petition for review in the U.S. Court of Appeals within 120 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2), the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2014–0598. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *http://www.regulations.gov.* A detailed record index, organized by subject, is available on EPA's Web site at *https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines.*

FOR FURTHER INFORMATION CONTACT: For more information, see EPA's Web site: *https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines.* For technical information, contact Karen Milam, Engineering and Analysis Division, Office of Science and Technology (4305T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–566–1915; email address: *Milam.Karen@epa.gov.*

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I. Regulated Entities and Supporting Documentation

A. Regulated Entities

Entities potentially regulated by this final action include:

Category	Examples of regulated entities	North American Industry Classification System (NAICS) Code
Industry	Crude Petroleum and Natural Gas Extraction	211111
	Natural Gas Liquid Extraction	211112

This section is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this final action. Other types of entities that do not meet the above criteria could also be regulated. To determine whether your facility would be regulated by this final action, you should carefully examine the applicability criteria listed in 40 CFR 435.30 and the definitions in 40 CFR 435.33(b) of the final rule and detailed further in Section VI, of this preamble. If you still have questions regarding the applicability of this final action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Supporting Documentation

The final rule is supported by a number of documents including the Technical Development Document for the Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category (TDD), Document No. EPA–820–R–16–003 (DCN SGE01188). This document is available in the public record for this final rule and on EPA's Web site at *https://www.epa.gov/eg/unconventional-oil-and-gas-extraction-effluent-guidelines.*

II. Legal Authority

EPA finalizes this regulation under the authorities of sections 101, 301, 304, 306, 307, 308, and 501 of the CWA, 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, and 1361.

III. Purpose and Summary of Final Rule

A. Purpose and Summary of the Final Rule

Responsible development of America's oil and gas resources offers important economic, energy security, and environmental benefits. EPA has been working with states and other stakeholders to understand and address potential impacts of hydraulic fracturing, an important process involved in producing unconventional oil and gas, to help ensure public confidence that oil and gas production is conducted in a safe and responsible manner. This final rule fills a gap in existing federal wastewater regulations to ensure that the current industry practice of not sending wastewater discharges from this sector to POTWs continues into the future. This rule does not address the practice of underground injection of wastewater discharges from this sector, which is covered under the Safe Drinking Water Act (SDWA) (see Chapter A of the TDD).

Recent advances in the well completion process, combining hydraulic fracturing and horizontal drilling, have enhanced the technological and economic feasibility of oil and natural gas extraction from both existing and new resources. As a result, in 2013, United States (U.S.) crude oil and natural gas production reached their highest levels in more than 15 and 30 years, respectively (DCN SGE01192). Further, the Department of Energy (DOE) projects that natural gas production in the U.S. will increase by 45 percent by 2040, compared to 2013 production levels (DCN SGE01192). Similarly, the DOE projects that by 2020, crude oil production in the U.S. will increase by 43 percent compared to 2013 production levels (DCN SGE01192).

Direct discharges of oil and gas extraction wastewater pollutants from onshore oil and gas resources to waters of the U.S. have been regulated since 1979 under the existing Oil and Gas Effluent Limitations Guidelines and Standards (ELGs) (40 CFR part 435), the majority of which fall under subpart C, the Onshore Subcategory. Oil and gas extraction activities subject to subpart C include production, field exploration, drilling, well completion, and well treatment. The limitations for direct dischargers in the Onshore Subcategory represent Best Practicable Control Technology Currently Available (BPT). Based on the availability and economic practicability of underground injection technologies, the BPT-based limitations for direct dischargers require zero discharge of pollutants to waters of the U.S. However, there are currently no requirements in subpart C that apply to onshore oil and gas extraction facilities that are "indirect dischargers," *i.e.*, those that send their discharges to POTWs (municipal wastewater treatment facilities) which treat the water before discharging it to waters of the U.S.

This final rule applies to a subset of oil and gas extraction, *i.e.*, onshore extraction from shale and/or tight geologic formations (referred to hereafter as unconventional oil and gas (UOG) resources). UOG extraction wastewater can be generated in large quantities and contains constituents that are potentially harmful to human health and the environment. Wastewater from UOG wells often contains high concentrations of total dissolved solids (TDS) (salt content). The wastewater can also contain various organic chemicals, inorganic chemicals, metals, and naturally-occurring radioactive materials (referred to as technologically enhanced naturally occurring radioactive material or TENORM).[1] This potentially harmful wastewater creates a need for appropriate wastewater management infrastructure and management practices. Historically, operators of oil and gas extraction facilities primarily managed their wastewater via underground injection (where available). Where UOG wells were drilled in areas with limited underground injection wells, and/or there was a lack of wastewater management alternatives, it became more common for operators to look to POTWs and private wastewater treatment facilities to manage their wastewater.

POTWs collect wastewater from homes, commercial buildings, and industrial facilities and pipe it through sewer lines to the sewage treatment plant. In some cases, industrial dischargers can haul wastewater to the treatment plant by tanker truck. The industrial wastewater, commingled with domestic wastewater, is treated by the POTW and discharged to a receiving waterbody. Most POTWs, however, are designed primarily to treat municipally-generated, not industrial, wastewater. They typically provide at least secondary level treatment and, thus, are designed to remove suspended solids and organic material using biological treatment. As mentioned previously, wastewater from UOG extraction can contain high concentrations of TDS, radioactive elements, metals, chlorides, sulfates, and other dissolved inorganic constituents that POTWs are not designed to remove. Certain UOG extraction wastewater constituents are not typical of POTW influent wastewater and can be discharged, untreated, from the POTW to the receiving stream; can disrupt the operation of the POTW (*e.g.*, by inhibiting biological treatment); can accumulate in biosolids (sewage sludge), limiting their beneficial use; and can facilitate the formation of harmful DBPs.

Where UOG extraction wastewaters have been discharged through POTWs and private wastewater treatment plants in the past, it has been documented that the receiving waters have elevated levels of TDS, specifically chlorides and bromide (DCN SGE01328). The concentration of TDS in UOG extraction wastewater can be high enough that if discharged untreated to a surface water it has the potential to adversely affect a number of the designated uses of the surface water, including use as a drinking water source, aquatic life support, livestock watering, irrigation, and industrial use. High concentrations of TDS can impact aquatic biota by causing increased receiving water salinity, osmotic imbalances, and toxic effects from individual ions present in the TDS. Increases in instream salinity have been shown to cause shifts in biotic communities, limit biodiversity, exclude less-tolerant species and cause acute or chronic effects at specific life stages (DCN SGE00946).

Discharges of bromide in industrial wastewater upstream of drinking water intakes—either directly or indirectly through POTWs—have led to the formation of carcinogenic disinfection by-products (brominated DBPs, in particular trihalomethanes) at drinking water utilities. Recent studies indicate that UOG extraction wastewaters contain various inorganic and organic DBP precursors that can react with disinfectants used by POTWs, and promote the formation of DBPs or alter speciation of DBPs, particularly brominated-DBPs, which are suspected to be among the more toxic DBPs (DCN SGE00535; DCN SGE00985). DBPs have been shown to have both adverse human health and ecological affects (DCN SGE00535; DCN SGE01126).

Section 307(b) of the CWA provides EPA authority to establish nationally applicable pretreatment standards for industrial categories that discharge indirectly (*i.e.*, send wastewater to any POTW); this authority applies to key pollutants, such as TDS and its constituents, that are not susceptible to treatment by POTWs, or for pollutants that would interfere with the operation of POTWs. Generally, EPA designs nationally applicable pretreatment standards for categories of industry (categorical pretreatment standards) to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment. EPA, in its discretion under section 304(g) of the Act, periodically evaluates indirect dischargers not subject to categorical pretreatment standards to identify potential candidates for new pretreatment standards. Until issuance of this final rule, EPA had not established nationally applicable pretreatment standards for the onshore oil and gas extraction point source subcategory.

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[1] Naturally occurring radioactive materials that have been concentrated or exposed to the accessible environment as a result of human activities such as manufacturing, mineral extraction, or water processing are referred to as technologically enhanced naturally occurring radioactive material (TENORM). "Technologically enhanced" means that the radiological, physical, and chemical properties of the radioactive material have been altered by having been processed, or beneficiated, or disturbed in a way that increases the potential for human and/or environmental exposures. (See EPA 402–R–08–005–V2)

This final rule establishes technology-based categorical pretreatment standards under the CWA for discharges of pollutants into POTWs from existing and new onshore UOG extraction facilities in subpart C of 40 CFR part 435 (80 FR 18557, April 7, 2015). The rule will fill a gap in federal CWA regulations and address concerns regarding the level of treatment provided by POTWs for UOG wastewater, potential interference with treatment processes, and potential impacts on water quality and aquatic life impacts that could result from inadequate treatment. Consistent with existing BPT-based requirements for direct dischargers in this subcategory, this final rule establishes pretreatment standards for existing and new sources (PSES and PSNS, respectively) that require zero discharge of wastewater pollutants associated with onshore UOG extraction facilities to POTWs.

This final rule does not include pretreatment standards for wastewater pollutants associated with conventional oil and gas extraction facilities or coalbed methane extraction facilities. EPA is reserving consideration of any such standards for a future rulemaking, if appropriate. See Section V1.A.

B. Summary of Costs and Benefits

Because the data reviewed by EPA show that the UOG extraction industry is not currently managing wastewaters by sending them to POTWs, the final rule is not projected to affect current industry practice or to result in incremental compliance costs or monetized benefits. UOG extraction wastewater is typically managed through disposal via underground injection wells, reuse/recycle in subsequent fracturing jobs, or transfer to a centralized waste treatment (CWT) facility (see 80 FR 18570, April 7, 2015). EPA is promulgating this rule as a backstop measure because onshore unconventional oil and gas extraction facilities have discharged to POTWs in the past and because the potential remains that some facilities may consider discharging to POTWs in the future.

IV. Background

A. Clean Water Act

Congress passed the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. 1251(a). The Act establishes a comprehensive program for protecting our nation's waters. Among its core provisions, the CWA prohibits the discharge of pollutants from a point source to waters of the U.S., except as authorized under the Act. Under section 402 of the CWA, discharges may be authorized through a National Pollutant Discharge Elimination System (NPDES) permit. The CWA establishes a two-pronged approach for these permits, technology-based controls that establish the floor of performance for all dischargers, and water quality-based limits where the technology-based limits are insufficient for the discharge to meet applicable water quality standards. To serve as the basis for the technology-based controls, the CWA authorizes EPA to establish national technology-based effluent limitations guidelines and new source performance standards for discharges from different categories of point sources, such as industrial, commercial, and public sources, that discharge directly into waters of the U.S.

Direct dischargers (those discharging directly to waters of the U.S.) must comply with effluent limitations in NPDES permits. Technology-based effluent limitations (TBELs) in NPDES permits for direct dischargers are derived from effluent limitations guidelines (CWA sections 301 and 304) and new source performance standards (CWA section 306) promulgated by EPA. Alternatively, TBELs may be established based on best professional judgment (BPJ) where EPA has not promulgated an applicable effluent guideline or new source performance standard (CWA section 402(a)(1)(B) and 40 CFR 125.3). The effluent guidelines and new source performance standards established by regulation for categories of industrial dischargers are based on the degree of control that can be achieved using various levels of pollution control technology, as specified in the Act. Additional limitations based on water quality standards are also required to be included in the permit where necessary to meet water quality standards. CWA section 301(b)(1)(C).

EPA promulgates national effluent guidelines and new source performance standards for major industrial categories for three classes of pollutants: (1) Conventional pollutants (total suspended solids, oil and grease, biochemical oxygen demand (BOD5), fecal coliform, and pH), as outlined in CWA section 304(a)(4) and 40 CFR 401.16; (2) toxic pollutants (*e.g.*, metals such as arsenic, mercury, selenium, and chromium; and organic pollutants such as benzene, benzo-a-pyrene, phenol, and naphthalene), as outlined in section 307(a) of the Act, 40 CFR 401.15 and 40 CFR part 423, appendix A; and (3) nonconventional pollutants, which are those pollutants that are not categorized as conventional or toxic (*e.g.*, ammonia-N, phosphorus, and TDS).

Under section 307(b) of the CWA, there are general and specific prohibitions on the discharge to POTWs of pollutants in specified circumstances in order to prevent "pass through" or "interference." Pass through occurs whenever the introduction of pollutants from a user will result in a discharge that causes or contributes to a violation of any requirement of the POTW permit. See 40 CFR 403.3(p). Interference means a discharge that, among other things, inhibits or disrupts the POTW or prevents biosolids use consistent with the POTW's chosen method of disposal. See 40 CFR 403.3(k). These general and specific prohibitions must be implemented through local limits established by POTWs in certain cases. See 40 CFR 403.5(c). POTWs with approved pretreatment programs must develop and enforce local limits to implement the general prohibitions on user discharges that pass through or interfere with the POTW and implement specific prohibitions in 40 CFR 403.5(b). In the case of POTWs that are not required to develop a pretreatment program, the POTWs must develop local limits where there is interference or pass through and the limits are necessary to ensure compliance with the POTW's NPDES permit or biosolids use.

The CWA also authorizes EPA to promulgate nationally applicable pretreatment standards that restrict pollutant discharges from facilities that discharge pollutants indirectly, by sending wastewater to POTWs, as outlined in sections 307(b) and (c) and 33 U.S.C. 1317(b) and (c). Specifically, the CWA authorizes EPA to establish pretreatment standards for those pollutants in wastewater from indirect dischargers that EPA determines are not susceptible to treatment by a POTW or which would interfere with POTW operations. CWA sections 307(b) and (c). Under section 301(b)(1)(A) and

301(b)(2)(A) and the legislative history of the 1977 CWA amendments, pretreatment standards are technology-based and analogous to TBELs for direct dischargers for the removal of toxic pollutants. As explained in the statute and legislative history, the combination of pretreatment and treatment by the POTW is intended to achieve the level of treatment that would be required if the industrial source were making a direct discharge. Conf. Rep. No. 95–830, at 87 (1977), reprinted in U.S. Congress. Senate. Committee on Public Works (1978), A Legislative History of the CWA of 1977, Serial No. 95–14 at 271 (1978). As such, in establishing pretreatment standards, EPA's consideration of pass through for national technology-based categorical pretreatment standards differs from that described above for general pretreatment standards. For categorical pretreatment standards, EPA's approach for pass through satisfies two competing objectives set by Congress: (1) That standards for indirect dischargers be equivalent to standards for direct dischargers; and (2) that the treatment capability and performance of the POTWs be recognized and taken into account in regulating the discharge of pollutants from indirect dischargers.

B. Effluent Limitations Guidelines and Standards Program

EPA develops ELGs that are technology-based regulations for specific categories of dischargers. EPA bases these regulations on the performance of control and treatment technologies. The legislative history of CWA section 304(b), which is the heart of the effluent guidelines program, describes the need to press toward higher levels of control through research and development of new processes, modifications, replacement of obsolete plants and processes, and other improvements in technology, taking into account the cost of controls. Congress has also stated that EPA need not consider water quality impacts on individual water bodies as the guidelines are developed. See Statement of Senator Muskie (October 4, 1972), *reprinted in* U.S. Senate Committee on Public Works, Legislative History of the Water Pollution Control Act Amendments of 1972, Serial No. 93–1, at 170.

There are four types of standards applicable to direct dischargers (facilities that discharge directly to waters of the U.S.), and two types of standards applicable to indirect dischargers (facilities that discharge to POTWs), described in detail later on. Subsections 1 through 4 describe standards for direct discharges and subsection 5 describes standards for indirect discharges.

1. Best Practicable Control Technology Currently Available (BPT)

Traditionally, EPA defines BPT effluent limitations based on the average of the best performances of facilities within the industry, grouped to reflect various ages, sizes, processes, or other common characteristics. BPT effluent limitations control conventional, toxic, and nonconventional pollutants. In specifying BPT, EPA looks at a number of factors. EPA first considers the cost of achieving effluent reductions in relation to the effluent reduction benefits. The Agency also considers the age of equipment and facilities, the processes employed, engineering aspects of the control technologies, any required process changes, non-water quality environmental impacts (including energy requirements), and such other factors as the Administrator deems appropriate. See CWA section 304(b)(1)(B). If, however, existing performance is uniformly inadequate, EPA can establish limitations based on higher levels of control than are currently in place in an industrial category, when based on an Agency determination that the technology is available in another category or subcategory and can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)

For discharges of conventional pollutants from existing industrial point sources, the CWA requires EPA to identify additional levels of effluent reduction that can be achieved with BCT. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that EPA establish BCT limitations after consideration of a two-part "cost reasonableness" test. In a July 9, 1986 **Federal Register** Notice, EPA published and explained its methodology for the development of BCT limitations in (51 FR 24974). Section 304(a)(4) designates the following as conventional pollutants: BOD_5, total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501; 40 CFR part 401.16).

3. Best Available Technology Economically Achievable (BAT)

BAT represents the second level of stringency for controlling direct discharge of toxic and nonconventional pollutants. In general, BAT-based effluent guidelines and new source performance standards represent the best available economically achievable performance of facilities in the industrial subcategory or category. Following the statutory language, EPA considers the technological availability and the economic achievability in determining what level of control represents BAT. CWA section 301(b)(2)(A). Other statutory factors that EPA considers in assessing BAT are the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, and non-water quality environmental impacts, including energy requirements and such other factors as the Administrator deems appropriate. CWA section 304(b)(2)(B). The Agency retains considerable discretion in assigning the weight to be accorded these factors. *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (D.C. Cir. 1978).

4. Best Available Demonstrated Control Technology (BADCT)/New Source Performance Standards (NSPS)

NSPS reflect effluent reductions that are achievable based on the best available demonstrated control technology (BADCT). Owners of new facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the BADCT for all pollutants (that is, conventional, nonconventional, and toxic pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements. CWA section 306(b)(1)(B).

5. Pretreatment Standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS)

As discussed previously, section 307(b) of the Act authorizes EPA to issue pretreatment standards for discharges of pollutants from existing sources to POTWs. Section 307(c) of the Act authorizes EPA to promulgate pretreatment standards for new sources (PSNS). Both standards are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. Categorical pretreatment standards for existing sources are technology-based and are analogous to BPT and BAT effluent limitations guidelines, and thus the Agency typically considers the same factors in promulgating PSES for toxic and non-conventional pollutants as it considers in promulgating BAT. See *Natural Resources Defense Council* v. *EPA,* 790 F.2d 289, 292 (3rd Cir. 1986). Similarly, in establishing pretreatment standards for new sources, the Agency typically considers the same factors in promulgating PSNS as it considers in promulgating NSPS (BADCT).

C. Subcategorization

In developing ELGs, EPA can divide an industry category into groupings called "subcategories" to provide a method for addressing variations among products, processes, treatment costs, and other factors that affect the determination of the "best available" technology. See *Texas Oil & Gas Ass'n.* v. *US EPA,* 161 F.3d 923, 939–40 (5th Cir.1998). Regulation of a category by subcategories provides that each subcategory has a uniform set of effluent limitations or pretreatment standards that take into account technological achievability, economic impacts, and non-water quality environmental impacts unique to that subcategory. In some cases, effluent limitations or pretreatment standards within a subcategory can be different based on consideration of these same factors, which are identified in CWA section 304(b)(2)(B). The CWA requires EPA, in developing effluent guidelines and pretreatment standards, to consider a number of different factors, which are also relevant for subcategorization. The CWA also authorizes EPA to take into account other factors that the Administrator deems appropriate. CWA section 304(b).

D. Oil and Gas Extraction Effluent Guidelines Rulemaking History

The Oil and Gas Extraction industry is subcategorized in 40 CFR part 435 as follows: (1) Subpart A: Offshore; (2) subpart C: Onshore; (3) subpart D: Coastal; (4) subpart E: Agricultural and Wildlife Water Use; and (5) subpart F: Stripper. EPA promulgated the first Oil and Gas Extraction ELGs (40 CFR part 435) in 1979 establishing BPT-based limitations for the Offshore, Onshore, Coastal, and Agricultural and Wildlife Use subcategories. EPA established BAT- and NSPS-based limits for certain subcategories in 1993 (Offshore), 1996 (Coastal), and 2001 (Synthetic-based drilling fluids). EPA also established pretreatment standards for one subcategory (Coastal) in 1996.

The previously established subpart C (Onshore) regulation covers wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities in the onshore oil and gas industry. Although UOG resources occur in offshore and coastal regions, recent development of UOG resources in the U.S. has occurred primarily in onshore regions, to which the regulations in subpart C (Onshore) and subpart E (Agricultural and Wildlife Water Use) apply. Accordingly, this rule addresses the gap in onshore regulations, and only the regulations that apply to onshore oil and gas extraction are described in more detail here.

1. Subpart C: Onshore

Subpart C applies to facilities engaged in the production, field exploration, drilling, well completion, and well treatment in the oil and gas extraction industry which are located landward of the inner boundary of the territorial seas—and which are not included in the definition of other subparts—including subpart D (Coastal). The regulations at 40 CFR 435.32 specify the following for BPT: There shall be no discharge of wastewater pollutants into navigable waters from any source associated with production, field exploration, drilling, well completion, or well treatment (*i.e.,* produced water, drilling muds, drill cuttings, and produced sand).

2. Subpart E: Agricultural and Wildlife Use

Subpart E applies to onshore facilities located in the continental U.S. and west of the 98th meridian for which the produced water has a use in agriculture or wildlife propagation when discharged into navigable waters. Definitions in 40 CFR 435.51(c) explain that the term "use in agricultural or wildlife propagation" means that (1) the produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses; and (2) the produced water is actually put to such use during periods of discharge. The regulations at 40 CFR 435.52 specify that the only allowable discharge is produced water, with an oil and grease concentration not exceeding 35 milligrams per liter (mg/L). The BPT regulations prohibit the discharge of waste pollutants into navigable waters from any source (other than produced water) associated with production, field exploration, drilling, well completion, or well treatment (*i.e.,* drilling muds, drill cuttings, produced sands).

E. State Pretreatment Requirements That Apply to UOG Extraction Wastewater

In addition to applicable federal requirements, some states regulate the management, storage, and disposal of UOG extraction wastewater, including regulations concerning pollutant discharges to POTWs from oil and gas extraction facilities. In addition to pretreatment requirements, some states have indirectly addressed the issue of pollutant discharges to POTWs by limiting the management and disposal options available for operators to use.

During initial development of Marcellus shale gas resources, some operators managed UOG wastewater by transfer to POTWs. EPA did not identify other areas in the U.S. where POTWs routinely accepted UOG extraction wastewaters. Chapter A of the TDD summarizes how Pennsylvania, Ohio, Michigan, and West Virginia responded to UOG extraction wastewater discharges to their POTWs. EPA did not identify any states that require zero discharge of pollutants from UOG operations to POTWs in the same manner as this final rule.

F. Related Federal Requirements in the Safe Drinking Water Act

As required by SDWA section 1421, EPA has promulgated regulations to protect underground sources of drinking water through Underground Injection Control (UIC) programs that regulate the injection of fluids underground. These regulations are found at 40 CFR parts 144–148, and specifically prohibit any underground injection not authorized by UIC permit. 40 CFR 144.11. The regulations classify underground injection into six classes; wells that inject fluids brought to the surface in connection with oil and gas production are classified as Class II UIC wells. Thus, onshore oil and gas extraction facilities that seek to meet the zero discharge requirements of the existing ELGs or final pretreatment standard through underground injection of wastewater must obtain a Class II UIC permit for such disposal or take the wastewater to an appropriately permitted injection facility.

V. Industry Profile

EPA gathered information on the industry via the North American Industry Classification System (NAICS), which is a standard created by the U.S. Census for use in classifying business establishments within the U.S. economy. The industry category affected by this final rule is the Oil and Gas Extraction industry (NAICS code 21111). The industry has two segments: Crude Petroleum and Gas Extraction (NAICS 211111) which is made up of facilities that have wells that produce petroleum or natural gas or produce crude petroleum from surface shale or tar sands; and Natural Gas Liquid Extraction (NAICS 211112), which is made up of facilities that recover liquid hydrocarbons from oil and gas field gases and sulfur from natural gas. According to data from the Statistics of U.S. Businesses (SUSB), in 2012 there were 6,646 firms in the overall Oil and Gas Extraction (OGE) industry. Of those firms, 98.5% were considered small business based on the Small Business Administration (SBA) criteria definition of a small firm in this industry as having 500 or fewer employees. In 2012, *Oil and Gas Extraction* sector firms employed, on average, 19 employees and had an estimated average $53 million in revenue per firm.

EPA reviewed financial performance of oil and gas firms from 2006 to 2014. Generally, over the analysis period, all segments of the oil and gas industry showed a similar profile of revenue growth; however, reviews of financial performance and condition metrics indicate a recent deterioration in financial performance and condition for OGE firms since mid-2014 due to the fall in crude oil and natural gas prices. The prediction of slow price recovery indicates that the financial condition of OGE firms in general may not recover in the short term, though the crude oil and natural gas prices are forecast to increase through 2040 (DCN SGE01192). While many factors will affect further UOG development, and forecasts inevitably involve considerable uncertainty, production is expected to continue to increase. EIA forecasts that by 2040, shale gas will account for 55 percent of U.S. natural gas production, with tight gas as the second leading source at 22 percent, and shale/tight oil[2] will account for 45 percent of total U.S. oil production (DCN SGE01192). See the industry profile (DCN SGE01277) for more information.

VI. Final Rule

A. Scope/Applicability

Consistent with the proposal, the scope of this final rule is specific to pretreatment standards for onshore oil and gas extraction facilities (subpart C). EPA did not propose to reopen the regulatory requirements applicable to any other subpart or the requirements for direct dischargers in subpart C. Rather, the scope of the final rule amends subpart C only to add requirements for indirect dischargers where there currently are none. Further, also consistent with the proposal, the final rule establishes requirements for wastewater discharges from UOG extraction facilities to POTWs. It does not establish requirements for wastewater discharges from conventional oil and gas extraction (COG) facilities. EPA reserves consideration of any such standards for a future rulemaking, if appropriate.

The final rule defines unconventional oil and gas resources as "crude oil and natural gas produced by a well drilled into a shale and/or tight formation (including, but not limited to, shale gas, shale oil, tight gas, and tight oil)." This definition is generally consistent with other readily available sources. For additional information, see Chapter B of the TDD.

As a point of clarification, although coalbed methane would fit this definition, the final pretreatment standards do not apply to pollutants in wastewater discharges associated with coalbed methane extraction to POTWs. EPA notes that the requirements in the existing effluent guidelines for direct dischargers also do not apply to coalbed methane extraction, as this industry did not exist at the time that the effluent guidelines were developed and was not considered by the Agency in establishing the effluent guidelines (DCN SGE00761). To reflect the fact that neither the final pretreatment standards nor the existing effluent guideline requirements apply to coalbed methane extraction, EPA expressly reserved a separate unregulated subcategory for coalbed methane in this final rule. For information on coalbed methane, see *https://www.epa.gov/eg/coalbed-methane-extraction-industry.*

B. Option Selection

EPA analyzed three regulatory options at proposal, the details of which were discussed fully in the document published on April 7, 2015 (80 FR 18557). In general, these three options ranged from requiring zero discharge of pollutants to POTWs, establishing non-zero pretreatment standards, or establishing no national pretreatment standards. Depending on the interests represented, public commenters supported virtually all of the regulatory options that EPA proposed—from the least stringent to the most stringent. Thus, in developing this final rule, EPA again considered the same three regulatory options.

1. PSES

After considering all of the relevant factors and technology options discussed in this preamble and in the TDD, as well as public comments, EPA decided to establish PSES based on current industry practice: Disposal in UIC wells, wastewater reuse/recycling to fracture[3] another well, or management by centralized waste treatment (CWT) facilities—none of which involve sending wastewater to POTWs. Thus, for PSES, the final rule establishes a zero discharge standard on all pollutants in UOG extraction wastewater.

Generally, EPA designs pretreatment standards to meet Congress' objective to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of pollutant removals prior to discharge to waters of the U.S. *See Chemical Manufacturers Assn.* v. *EPA,* 870 F.2d 177, 245 (5th Cir. 1989). This means that, typically, the requirements for indirect dischargers are analogous to those for direct dischargers. As explained in Section IV.C., the existing BPT-based requirement for direct dischargers in the Onshore Subcategory is zero discharge of wastewater pollutants into waters of the U.S. from any source associated with production, field exploration, drilling, well completion, or well treatment.

As explained in Section XII.E of the proposal (80 FR 18570, April 7, 2015), EPA evaluated the practices currently used to manage UOG extraction wastewaters. Based on the information reviewed as part of this final rulemaking, EPA concludes that current industry practice is to not discharge pollutants from onshore UOG extraction to POTWs.[4] Rather, the vast majority of this wastewater is managed by disposal in underground injection wells and/or re-use in fracturing another well. A small, but in some geographic areas increasing, portion of the industry also transfers its wastewater to CWT facilities.[5]

The technology basis for the promulgated PSES is disposal in UIC wells, wastewater reuse/recycling to fracture another well, or management by CWT facilities. Because all existing UOG extraction facilities currently employ alternative wastewater management practices other than transfer to a POTW, the technology basis for meeting a zero discharge requirement is widely available. While EPA bases pretreatment standards and associated discharge limits on a technology basis, the agency does not require facilities to employ any specific technology; rather, facilities may comply with alternative technologies as long as they meet the prescribed limits.

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[2] EIA reported this data as "tight oil" production but stated that it includes production from both shale oil formations (*e.g.,* Bakken, Eagle Ford) and tight oil formations (*e.g.,* Austin Chalk).

[3] In some cases, industry has also re-used/recycled the water to drill another well that is not fractured.

[4] EPA solicited additional data and information on current industry practice as well as its preliminary finding that no UOG facilities currently discharge to POTWs in the proposal. EPA did not receive data since proposal to contradict this finding.

[5] Existing effluent limitations guidelines and pretreatment standards at 40 CFR part 437 apply to CWT facilities. The CWT industry handles wastewater and industrial process by-products from off-site. CWT facilities may receive a wide variety of hazardous and non-hazardous industrial wastes for treatment.

Some commenters asserted that UIC wells may not be available in the future in all geographic locations, but provided no data to support their assertion. EPA does not have any data to demonstrate that UIC capacity nationwide will be expended and that this current management option will not be available in the future (See Chapter D of the TDD). Further, data suggest that, where UIC wells are currently available, this availability will likely continue in the future (see Chapter D of the TDD). Moreover, the technology basis for the final pretreatment standards is not limited to UIC disposal. EPA identified two other approaches that also meet the zero discharge requirement: Reuse/recycle of the wastewater for re-fracturing other wells, or transfer of the wastewater to a CWT facility. In recent years, industry has greatly expanded its knowledge about the ability to reuse/recycle UOG flowback and long-term produced water (the major contributors to UOG extraction wastewater by volume) in fracturing another well. Consequently, as the UOG industry continues to grow and new wells are being fractured, the need for UIC capacity for UOG extraction wastewater may decrease, even in geographic locations with an abundance of UIC capacity, due to the increased availability of reuse/recycle. In addition, EPA's record demonstrates that in areas of the country where UIC wells and/or opportunities for reuse in fracturing another well are limited, UOG extraction facilities transfer their wastewater to a CWT facility (see Chapter D of the TDD). Some commenters assert that the option to transfer UOG wastewater to CWT facilities may be limited in the future because EPA may revise ELGs for this industry. While EPA is conducting a study of CWT facilities that accept oil and gas wastewater to determine if revision to the CWT regulations may be appropriate, EPA is not evaluating any approaches that would directly restrict their availability to accept such wastewaters.

While the technology basis is best performing in that it achieves zero discharge of pollutants in UOG extraction wastewater to POTWs, the requirement reflects current industry practice and EPA therefore estimates that there will be no incremental pollutant reductions. Accordingly, because industry is already meeting this requirement, no facilities will incur incremental costs for compliance with the promulgated PSES and, therefore, the promulgated PSES is economically achievable. For the same reasons, the final PSES will result in no incremental non-water quality environmental impacts. Finally, because the final rule represents current industry practice, EPA requires that the PSES based on zero discharge of wastewater pollutants to POTWs be effective as of the effective date of this rule, 60 days after publication of this rule in the **Federal Register**.

EPA did not establish PSES based on Option 2, under which EPA would establish non-zero numerical pretreatment standards for discharges of wastewater pollutants from UOG extraction facilities. Such an option could be similar to the one adopted in Pennsylvania in 2010 that requires pretreatment of oil and gas wastewaters before discharge to a POTW to meet a maximum TDS concentration of 500 mg/L as well as specific numerical concentrations for other pollutants (see Chapter A of the TDD). Some commenters suggested this approach would provide an "escape-valve" for the future in the event that UIC disposal well capacity is exhausted. Others have suggested this would allow the water to be available for re-use (other than in fracturing another well) if technologies become available to pre-treat it to remove dissolved pollutants in a cost effective manner.

Although EPA identified technologies[6] that currently exist to treat dissolved pollutants in UOG extraction wastewater that could be used to set a non-zero numeric discharge limit, EPA did not select this option for the following reasons. First, the existing requirements for direct discharges of UOG extraction wastewater in the Onshore Subcategory require zero discharge of pollutants. As explained previously, EPA generally establishes requirements for direct and indirect discharges so that the wastewater receives comparable levels of pollutant removals prior to discharge to waters of the U.S.

Second, as detailed previously, UOG facilities in this subcategory are currently meeting the zero discharge requirement. Thus, any option that would allow for a discharge of UOG pollutants above the current zero discharge level would be less stringent than the current industry practice and thus would potentially increase the discharge of such pollutants to POTWs. EPA reasonably concluded that—as compared to a less stringent non-zero technology basis in Option 2—a standard based on available zero discharge options reflects the "best" available technology within the meaning of Section 304(b) of the Clean Water Act. Moreover, unlike Option 2, a zero discharge technology option is consistent with the CWA goal of eliminating the discharge of pollutants into navigable waters (CWA sections 101(a)(1); 301(b)(2)(A) and 306(a)(1)).

Third, EPA disagrees with the commenters' suggestion that an option allowing for the discharge to POTWs is necessary as an "escape valve" in case of limited future availability of UIC disposal options. As explained previously, UIC disposal capacity is currently widely available, and EPA does not have data to suggest that this capacity will be limited in the future. Moreover, approaches to achieve zero discharge are not limited to UIC wells, and EPA has no data to suggest that other zero discharge options, such as reuse/recycle of wastewater for re-fracturing or sending wastewater to CWT facilities, will be limited in the future. Without any such data, there is no basis for EPA to conclude that an "escape valve" allowing for discharge to POTWs is needed to address concerns about limited future availability of zero discharge technology options.

Fourth, although EPA identified technologies that currently exist to treat dissolved pollutants in UOG extraction wastewater, these TDS-removal technologies are also likely more costly, as demonstrated by information in the record on estimated costs of managing wastewater under various approaches, relative to the suite of technologies that form the zero discharge technology basis for the final rule. See DCN SGE01186, SGE00139, SGE00070, SGE00350, SGE00279, SGE01064, SGE00283, SGE00300, SGE00625, SGE00635, SGE00280, SGE00245, SGE00279, SGE00276, SGE00275.

With respect to the comments suggesting that EPA establish a non-zero numerical treatment standard in order to allow for (non-fracturing) reuse/recycle of the wastewater, data collected for this rulemaking demonstrate that the current technologies are capable of reducing TDS (and other dissolved pollutants) well below 500 mg/L (see DCN SGE01186). To the extent that these technologies or others are developed in the future to reduce pollutants in UOG extraction wastewater to enable them to be reused/

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[6] See DCN SGE01186.

recycled for purposes other than fracturing another well, these pre-treated wastewaters can be used directly for the other applications rather than going to a POTW.

In addition to the PSES option of zero discharge of wastewater pollutants, EPA also considered a "no rule" option, based on the discussion previously that no UOG facilities are currently transferring wastewater to POTWs, and given available alternative management options such as disposal in UIC wells and reuse/recycling.

EPA did not select a "no rule" option for several reasons. First, there is no national regulation that prevents or requires pretreatment of such discharges—and, as mentioned previously, EPA is not aware of any POTWs that are designed to treat dissolved pollutants common in UOG extraction wastewater. Thus, as explained previously, some pollutants of concern in UOG extraction wastewater will not be physically, chemically, or biologically reduced by the treatment processes typically used at POTWs, and these pollutants, if sent to POTWs, are expected to be discharged from the POTW into receiving waters. In addition, these pollutants can cause operational problems for the POTW's biological treatment processes and alter the POTW's ability to adequately remove BOD, TSS, and other pollutants for which it is regulated. For some UOG pollutants, such as radionuclides, the data indicate POTWs will remove some portion while discharging the remainder (DCN SGE01028; DCN SGE01185). In these cases, some portion of the radionuclides will partition to the POTW biosolids, which can cause the POTW to incur increased costs to change its selected method of biosolids management (DCN SGE00615). See Chapter D of the TDD. This means that, absent a pretreatment standard, constituents of such wastewater could be discharged to receiving waters or interfere with POTW operations when other available options such as reuse/recycle and proper disposal in a Class II UIC well better protect water quality and aquatic communities and help further the zero discharge goal of the CWA. CWA section 101(a)(1).

Second, as detailed in the TDD, few states have regulations or policies that prevent discharges of pollutants in UOG extraction wastewater to POTWs or that mandate pre-treatment prior to discharge to a POTW. In the absence of such regulations or policies, resource-constrained control authorities and/or POTWs that receive requests to accept UOG extraction wastewater would be in the position of having to evaluate whether to accept transfers of wastewater on a case-by-case basis. It is beneficial to the states as a practical matter to establish federal regulations that mandate this existing practice, in order to avoid the burden for each state to potentially repeat the effort of promulgating state-level regulations. EPA has discussed this rule with several states that have indicated that a federal pretreatment standard would reduce their administrative burden (DCN SGE00762; DCN SGE00743).

Third, EPA also considered the future burden that continued lack of pretreatment standards can impose on POTWs. The UOG extraction industry is predicted to continue to grow in the future, resulting in the installation, fracturing, and possible re-fracturing of hundreds of thousands of wells. Well operators will continue to generate UOG extraction wastewater and could request that local POTWs accept their wastewater for discharge. In the absence of federal pretreatment standards, POTWs can legally accept UOG extraction wastewater to the extent that such wastewater transfers are in compliance with state and local requirements and that resulting discharges comply with their permits. Evaluating each potential customer (industrial user) and developing a determination for each new UOG extraction wastewater source on a case-by-case basis could be burdensome for POTWs. In addition, where a POTW determines it can accept this wastewater, complying with applicable reporting requirements could be a significant burden to some POTWs. EPA concluded that a national-level determination that UOG extraction wastewater contains pollutant concentrations that could pass through POTWs, and establishment of categorical pretreatment standards, will avoid burdening individual pretreatment Control Authorities (*e.g.* POTWs) with evaluating each individual request. While EPA does not have the information to quantify the reductions in administrative burden that will likely result from the final rule, states generally support EPA's position that such reductions will be realized (DCN SGE00762; DCN SGE00743).

Fourth, history demonstrates that, absent controls preventing the transfer of or requiring pretreatment of such wastewater, POTWs could and did accept it. This occurred in Pennsylvania (see Chapter A and Chapter D of the TDD), where POTWs were used to manage UOG extraction wastewater until the state took action. This action included promulgating new regulations requiring pretreatment. Among the drivers behind these actions taken by Pennsylvania was that some waters were impaired by TDS. (DCN SGE00187). To avoid future scenarios where POTWs receive UOG extraction wastewater, it is reasonable to codify the zero discharge practice already adopted by the industry that EPA has found to be "best" in terms of pollutant removals, as well as both technologically available and economically achievable.

2. PSNS

After considering all of the relevant factors and technology options discussed in this preamble and in the TDD, as well as public comments, as is the case with PSES, EPA decided to establish PSNS based on the technologies described in Option 1. For PSNS, the final rule establishes a zero discharge standard on all pollutants in UOG wastewater.

As previously noted, under section 307(c) of the CWA, new sources of pollutants into POTWs must comply with standards that reflect the greatest degree of effluent reduction achievable through application of the best available demonstrated control technologies. Congress envisioned that new treatment systems could meet tighter controls than existing sources because of the opportunity to incorporate the most efficient processes and treatment systems into the facility design. The technologies used to control pollutants at existing sources, disposal in UIC wells, wastewater reuse/recycling to fracture another well, and/or management at CWT facilities—are fully available to new sources for the same reasons specified earlier for existing sources. They achieve the greatest degree of effluent reduction available: zero discharge of pollutants in UOG extraction wastewater. Furthermore, EPA has not identified any technologies that are demonstrated to be available for new sources that are different from those identified for existing sources.

EPA determined that the final PSNS present no barrier to entry into the market for new sources. EPA has no data in the record indicating that new sources would manage their wastewater any differently than existing sources or that the management options that are available for existing sources would not be available for new sources. Indeed, EPA's record demonstrates that as new UOG facilities have come into existence, they are relying on the same current industry best practices as existing facilities, using zero discharge technology options to avoid sending wastewater to POTWs. See TDD Table D–1 and DCN SGE01179.A03.

Accordingly, EPA found that there are no overall incremental impacts from the final standards on new sources, as is the case for existing sources, since the incremental costs faced by new sources generally will be the same as those faced by existing sources. EPA projects no incremental non-water quality environmental impacts. Therefore, EPA established PSNS that are the same as the final PSES for this final rule.

EPA rejected other options for PSNS for the same reasons that the Agency rejected other options for PSES. And, as with the final PSES, EPA determined that the final PSNS prevent pass through of pollutants from POTWs into receiving streams and also help control contamination of POTW sludge.

3. Pollutants Selected for Regulation Pass-Through Analysis

EPA identifies all pollutants in UOG extraction wastewater as pollutants of concern and similarly determined all pollutants pass through. As a result, all pollutants in UOG extraction wastewater are directly regulated by the final pretreatment standards.

CWA section 301(b) directs EPA to eliminate the discharge of all pollutants where it is technologically available and economically achievable to do so (after a consideration of the factors specified in section 304(b) of the Act). The first step in such an analysis is typically to identify Pollutants of Concern (POCs)—or the pollutants to be potentially regulated by the effluent guideline. For some industries and wastestreams, not every pollutant in the wastestream may be a pollutant of concern. For example, not every pollutant may be present in an amount or frequency that EPA can demonstrate, using available data, is treatable by the candidate technology. Where this is the case, EPA may choose to establish numerical limitations for only a subset of the pollutants present in the wastestream. For other industries and wastestreams, the candidate technology may be capable of controlling all pollutants present in the wastestream regardless of amount or frequency. Where this is the case, EPA considers all pollutants in the wastestream to be POCs. This is the case in this final rule because, as described previously, the technology bases for the rule: underground injection of UOG extraction wastewater, recycling and reuse of that wastewater, or management by CWT facilities; results in zero discharge of all pollutants from UOG facilities to POTWs. Therefore, under this rule, all pollutants in UOG extraction wastewater are POCs. Chapter C of the TDD provides a summary of available characterization data for UOG extraction wastewaters.

In addition, before establishing PSES/PSNS for a pollutant, EPA examines whether the pollutant "passes through" a POTW to waters of the U.S. or interferes with the POTW operation or sludge disposal practices. In determining whether a pollutant passes through POTWs for these purposes,[7] where EPA establishes non-zero pretreatment standards, EPA generally compares the percentage of a pollutant removed by well-operated POTWs performing secondary treatment to the percentage removed by the BAT/NSPS technology basis. A pollutant is determined to pass through POTWs when the median percentage removed nationwide by well-operated POTWs is less than the median percentage removed by the BAT/NSPS technology basis. Pretreatment standards are established for those pollutants regulated under BAT/NSPS that pass through POTWs. In this way, EPA is able to ensure that the standards for indirect dischargers are equivalent to direct dischargers and that the treatment capability and performance of POTWs is recognized and taken into account in regulating the pollutants from indirect dischargers.

For those wastestreams regulated with a zero discharge limitation or standard, EPA typically sets the percentage removed by the technology basis at 100 percent for all pollutants. Because a POTW would not be able to achieve 100 percent removal of wastewater pollutants, the percent removal at a POTW would be less than that of the candidate zero-discharge technology. For this final rule, using this approach, EPA determined that all pollutants pass through and that it is appropriate to set PSES/PSNS for all pollutants to prevent pass through.

VII. Environmental Impacts

UOG production generates significant volumes of wastewater that need to be managed. As described in Section XII.C.2 of the proposed rule (80 FR 18569, April 7, 2015), unconventional wells can produce flowback volumes ranging between 210,000 and 2,100,000 gallons during the initial flowback process.[8] During the production phase, wells typically produce smaller volumes of water (median flow rates range from 200–800 gallons per day) and continue producing wastewater throughout the life of the well (see TDD Chapter C.2).

In general, evidence of environmental impacts to surface waters from discharges of UOG extraction wastewater is sparsely documented—as direct discharges from onshore oil and gas extraction have been prohibited under the existing regulations since 1979; and based on current industry best practice, there have been few indirect discharges of such wastewater to POTWs. Some of the environmental impacts documented to date, such as increased DBP formation in downstream drinking water treatment plants, resulted from wastewater pollutants that passed untreated through POTWs in Pennsylvania (see Chapter D of the TDD).

A. Pollutants

As described in Section XII.D of the proposed rule (80 FR 18569, April 7, 2015), high concentrations of TDS are common in UOG extraction wastewater. Inorganic constituents leaching from geologic formations, such as sodium, potassium, bromide, calcium, fluoride, nitrate, phosphate, chloride, sulfate, and magnesium, represent most of the TDS in UOG extraction wastewater. Produced water can also include barium, radium, and strontium. Based on available data, TDS cations (positively charged ions) in UOG extraction wastewater are generally dominated by sodium and calcium, and the anions (negatively charged ions) are dominated by chloride (DCN SGE00284; See also Chapter C of the TDD). TDS concentrations vary among the UOG formations and can exceed 350,000 mg/L. For comparison, sea water contains approximately 35,000 mg/L TDS.

B. Impacts From the Discharge of Pollutants Found in UOG Extraction Wastewater

As explained in Chapter D of the TDD, POTWs are typically designed to treat organic waste, total suspended solids, and constituents responsible for biochemical oxygen demand, not to treat TDS. When transfers of UOG extraction wastewater to POTWs were occurring in Pennsylvania, these POTWs, lacking adequate TDS removal processes, diluted UOG extraction wastewaters with other sewage flows and discharged TDS-laden effluent into local streams and rivers. POTWs not sufficiently treating TDS in UOG extraction wastewater were a suspected source of elevated TDS levels in the Monongahela River in 2009 (DCN

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[7] As explained in Section IV, the definition of pass through for general pretreatment standards appropriately differs from the definition in establishing national categorical pretreatment standards as they serve different objectives.

[8] As explained in Chapter B of the TDD the length of the flowback process is variable. Literature generally reports it as 30 days or less (DCN SGE00532).

SGE00525). Also see Chapter D of the TDD for additional examples.

In addition to UOG wastewater pollutants passing through POTWs, other industrial discharges of inadequately treated UOG extraction wastewater have also been associated with in-stream impacts. One study of discharges from a CWT facility in western Pennsylvania that treats UOG extraction wastewater examined the water quality and isotopic compositions of discharged effluents, surface waters, and stream sediments (DCN SGE00629).[9] The facility's treatment process includes settling, precipitation, and fine screening, but does not remove TDS (DCN SGE00525). The study found that the discharge of the effluent from the CWT facility increased downstream concentrations of chloride and bromide above background levels. The chloride concentrations 1.7 kilometers downstream of the treatment facility were two to ten times higher than chloride concentrations found in similar reference streams in western Pennsylvania. Radium 226 levels in stream sediments at the point of discharge were approximately 200 times greater than upstream and background sediments.

C. Impact on Surface Water Designated Uses

UOG extraction wastewater TDS concentrations are typically high enough, that if discharged untreated to surface water, affect adversely a number of designated uses of the surface water, including drinking water source, aquatic life support, livestock watering, irrigation, and industrial use.

1. Drinking Water Uses

Available data indicate that the concentration of TDS in UOG extraction wastewaters can often significantly exceed recommended drinking water concentrations. Because TDS concentrations in drinking water source waters are typically well below the recommended levels for drinking, few drinking water treatment facilities have technologies to remove TDS. Two published standards for TDS in drinking water include the U.S. Public Health Service recommendation and EPA's secondary maximum contaminant level recommendation that TDS in drinking water should not exceed 500 mg/L. High concentrations of TDS in drinking water primarily degrade its taste rather than pose a human health risk. Taste surveys found that water with less than 300 mg/L TDS is considered excellent, and water with TDS above 1,100 mg/L is unacceptable (DCN SGE00939). The World Health Organization dropped its health-based recommendations for TDS in 1993, instead retaining 1,000 mg/L as a secondary standard for taste (DCN SGE00947).

Bromide in UOG wastewater discharges can adversely affect surface waters used as drinking water supplies. Recent studies of industrial discharges that contain bromide upstream of drinking water utilities' intakes demonstrate that with bromides present in drinking water source waters at increased levels, carcinogenic disinfection by-products (brominated DBPs, in particular trihalomethanes (THMs)) can form at the drinking water utility (DCN SGE01329). DBPs have been shown to have both adverse human health and ecological affects. Studies also demonstrate that bromide in UOG wastewaters treated at POTWs can lead to the formation of DBPs within the POTW. EPA reviewed a study of a POTW accepting UOG wastewater that unintentionally created DBPs due to insufficient removal of bromide and other UOG wastewater constituents (DCN SGE00535; DCN SGE00587). The study found that UOG extraction wastewaters contain various inorganic and organic DBP precursors that can react with disinfectants used by POTWs to promote the formation of DBPs, or alter speciation of DBPs, particularly brominated-DBPs, which are suspected to be among the more toxic DBPs (DCN SGE00535; DCN SGE00985). See Chapter D of the TDD for further discussion of DBP formation associated with UOG extraction wastewaters.

2. Aquatic Life Support Uses

TDS and its accompanying salinity play a primary role in the distribution and abundance of aquatic animal and plant communities. High levels of TDS can impact aquatic biota through increases in salinity, loss of osmotic balance in tissues, and toxicity of individual ions. Increases in salinity have been shown to cause shifts in biotic communities, limit biodiversity, exclude less-tolerant species and cause acute or chronic effects at specific life stages (DCN SGE00946). A detailed study of plant communities associated with irrigation drains reported substantial changes in marsh communities, in part because of an increase in dissolved solids (DCN SGE00941). Observations over time indicate a shift in plant community coinciding with increases in dissolved solids from estimated historic levels of 270 to 1170 mg/L, as species that are less salt tolerant such as coontail (*Ceratophyllus demersum*) and cattail (*Typha* sp.) were nearly eliminated. A related study found that lakes with higher salinity exhibit lower aquatic biodiversity, with species distribution also affected by ion composition (DCN SGE00940).

Aquatic toxicity is dependent on the ionic composition of the mixture. Salts, specifically sodium and chloride, are the majority (*i.e.*, much greater than 50 percent) of TDS in UOG produced water (DCN SGE00284). Typical chloride concentrations in UOG wastewater have been measured at concentrations up to 130,000 mg/L (see TDD Table C11). Macroinvertebrates, such as fresh water shrimp and aquatic insects that are a primary prey of many fish species, have open circulatory systems that are especially sensitive to pollutants like chloride. Based on laboratory toxicity data from EPA's 1988 chloride criteria document and more recent non-EPA studies, chloride acute effect concentrations for invertebrates ranged from 953 mg/L to 13,691 mg/L. Chloride chronic effect concentrations for invertebrates ranged from 489 mg/L to 556 mg/L. In addition to the laboratory data, EPA also reviewed data from a 2009 Pennsylvania Department of Environmental Protection violation report documenting a fish kill attributed to a spill of diluted produced water in Hopewell Township, PA. The concentration of TDS at the location of the fish kill was as high as 7,000 mg/L. While not related to UOG extraction wastewater, negative impacts of high TDS, including fish kills, were documented during 2009 at Dunkard Creek located in Monongalia County, Pennsylvania. (DCN SGE00001 and DCN SGE00001.A01)

3. Livestock Watering Uses

POTW discharges to surface waters containing high concentrations of TDS can impact downstream uses for livestock watering. High TDS concentrations in water sources for livestock watering can adversely affect animal health by disrupting cellular osmotic and metabolic processes (DCN SGE01053). Domestic livestock, such as cattle, sheep, goats, horses, and pigs have varying degrees of sensitivity to TDS in drinking water.

4. Irrigation Uses

If UOG extraction wastewater discharges to POTWs increase TDS concentrations in receiving streams, downstream irrigation uses of that surface water can be negatively affected.

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[9] Discharges from CWT facilities are subject to ELGs in 40 CFR part 437. However, the effect of discharges of treated oil and gas wastewaters from CWT facilities that lack treatment for TDS is similarly representative of POTWs.

Elevated TDS levels can limit the usefulness of water for irrigation. Excessive salts affect crop yield in the short term, and the soil structure in the long term. Primary direct impacts of high salinity water on plant crops include physiological drought, increased osmotic potential of soil, specific ion toxicity, leaf burn, and nutrient uptake interferences (DCN SGE00938). In general, for various classes of crops the salinity tolerance decreases in the following order: forage crops, field crops, vegetables, fruits.

In addition to short-term impacts to crop plants, irrigating with high TDS water can result in gradual accumulation of salts or sodium in soil layers and eventual decrease in soil productivity. The susceptibility of soils to degradation is dependent on the soil type and structure. Sandy soils are less likely than finely textured soils to accumulate salts or sodium. Soils with a high water table or poor drainage are more susceptible to salt or sodium accumulation. The most common method of estimating the suitability of a soil for crop production is through calculation of its sodicity as estimated by the soil's sodium absorption ratio (SAR). The impact of irrigation water salinity on crop productivity is a function of both the SAR value and the electrical conductivity. The actual field-observed impacts are very site-specific depending on the soil and crop system (DCN SGE00938).

5. Industrial Uses

POTW discharges to surface waters are often upstream of industrial facilities that withdraw surface waters for various cooling and process uses. High concentration of TDS can adversely affect industrial applications requiring the use of water in cooling tower operations, boiler feed water, food processing, and electronics manufacturing. Concentrations of TDS above 500 mg/L result in excessive scaling in water pipes, water heaters, boilers and household appliances (DCN SGE00174). Depending on the industry, TDS in intake water can interfere with chemical processes within the plant. Some industries requiring ultrapure water, such as semi-conductor manufacturing facilities, are particularly sensitive to high TDS levels due to the treatment cost for the removal of TDS.

VIII. Regulatory Implementation of the Standard

The requirements in this rule apply to discharges from UOG facilities through local pretreatment programs under CWA section 307. Pretreatment standards promulgated under section 307(b) and (c) are self-implementing. See CWA section 307(d). The duty to comply with such standards is independent of any state or a municipal control authority permit or control mechanism containing the standards and associated reporting requirements.

A. Implementation Deadline

Because the requirements of the final rule are based on current practice, EPA determined that the PSES/PSNS standards apply on the effective date of the final rule, August 29, 2016.

B. Upset and Bypass Provisions

For discussion of upset and bypass provisions, see the proposed rule (80 FR 18569, April 7, 2015).

C. Variances and Modifications

For discussion of variances and modifications, see the proposed rule (80 FR 18569, April 7, 2015).

IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final rule codifies current industry practice and does not impose any additional reporting requirements.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule.

For purposes of assessing the impacts of the final rule on small entities, small entity is defined as: A small business that is primarily engaged in Crude Petroleum and Natural Gas Extraction and Natural Gas Liquid Extraction by NAICS code 211111 and 211112 with fewer than 500 employees (based on Small Business Administration size standards). The small entities that are subject to the requirements of this final rule are small businesses that engage in UOG extraction as defined in Section V, of this preamble. No small businesses will experience a significant economic impact because the final rulemaking codifies current industry practice and does not impose any new requirement that is not already being met by the industry. I have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no incremental enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not alter the basic state-federal scheme established in the CWA under which EPA authorizes states to carry out the NPDES permit program. It will not have substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Although this order does not apply to this action, as explained in Section VI, EPA coordinated closely with states through a workgroup, as well as outreach efforts to pretreatment coordinators and pretreatment authorities.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The final rule contains no Federal mandates for tribal governments and does not impose any enforceable duties on tribal governments. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA coordinated with tribal officials early in the process of developing this rule to enable them to have meaningful and timely input into its development. EPA coordinated with federally recognized tribal governments in May and June of 2014, sharing information about the UOG pretreatment standards proposed rulemaking with the National Tribal Caucus and the National Tribal Water Council. EPA continued the outreach effort by collecting data about UOG operations on tribal reservations, UOG operators that are affiliated with Indian tribes, and POTWs owned or operated by tribes that can accept industrial wastewaters (see DCN SGE00785). Based on this information, there are no tribes operating UOG wells that discharge wastewater to POTWs nor are there any tribes that own or operate POTWs that accept industrial wastewater from UOG facilities; therefore, this final rule will not impose any costs on tribes.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action codifies current industry practice; therefore there is no change in environmental health or safety risks.

H. Executive Order 13211: Energy Effects

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This final rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The final rule will neither increase nor decrease environmental protection (as described in Section VI) as it codifies current industry practice; therefore, EPA determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. EPA requested comment on this E.O. in the proposal (80 FR 18579; April 7, 2015) and received no comments.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 435

Environmental protection, Pretreatment, Waste treatment and disposal, Water pollution control, Unconventional oil and gas extraction.

Dated: June 13, 2016.

Gina McCarthy,

Administrator.

Therefore, 40 CFR part 435 is amended as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

■ 1. The authority citation for part 435 is revised to read as follows:

Authority: 33 U.S.C. 1251, 1311, 1314, 1316, 1317, 1318, 1342 and 1361.

Subpart C—Onshore Subcategory

■ 2. Add § 435.33 to subpart C to read as follows:

§ 435.33 Pretreatment standards for existing sources (PSES).

(a) *PSES for wastewater from unconventional oil and gas extraction.* Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this section, must achieve the following pretreatment standards for existing sources (PSES).

(1) There shall be no discharge of wastewater pollutants associated with production, field exploration, drilling, well completion, or well treatment for unconventional oil and gas extraction (including, but not limited to, drilling muds, drill cuttings, produced sand, produced water) into publicly owned treatment works.

(2) For the purposes of this section,

(i) *Unconventional oil and gas* means crude oil and natural gas produced by a well drilled into a shale and/or tight formation (including, but not limited to, shale gas, shale oil, tight gas, tight oil).

(ii) *Drill cuttings* means the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid.

(iii) *Drilling mud* means the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure.

(iv) *Produced sand* means the slurried particles used in hydraulic fracturing, the accumulated formation sands, and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(v) *Produced water* means the fluid brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and includes, where present, formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(b) *PSES for Wastewater from Conventional Oil and Gas Extraction.* [Reserved]

■ 3. Add § 435.34 to subpart C to read as follows:

§ 435.34 Pretreatment standards for new sources (PSNS).

(a) *PSNS for wastewater from unconventional oil and gas extraction.* Except as provided in 40 CFR 403.7 and 403.13, any new source with discharges subject to this section must achieve the following pretreatment standards for new sources (PSNS).

(1) There shall be no discharge of wastewater pollutants associated with production, field exploration, drilling, well completion, or well treatment for unconventional oil and gas extraction (including, but not limited to, drilling muds, drill cuttings, produced sand, produced water) into publicly owned treatment works.

(2) For the purposes of this section, the definitions of unconventional oil and gas, drill cuttings, drilling muds, produced sand, and produced water are as specified in § 435.33(b)(2)(i) through (v).

(b) *PSNS for Wastewater from Conventional Oil and Gas Extraction.* [Reserved]

■ 4. Add subpart H to read as follows:

Subpart H—Coalbed Methane Subcategory [Reserved]

[FR Doc. 2016–14901 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary of the Interior

43 CFR Part 10

[NPS–WASO–NAGPRA–20860; PPWOCRADN0–PCU00RP14.R50000]

RIN 1024–AE28

Civil Penalties Inflation Adjustments

AGENCY: Office of the Secretary, Interior.

ACTION: Interim final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Department of the Interior regulations implementing the Native American Graves Protection and Repatriation Act with an initial "catch-up" adjustment under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

DATES: This rule is effective on July 28, 2016. Comments will be accepted until August 29, 2016.

ADDRESSES: You may submit comments, identified by the Regulation Identifier Number (RIN) 1024–AE34, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for RIN 1024–AE34 and follow the instructions for submitting comments.
- *Mail, Hand Delivery, or Courier:* Melanie O'Brien, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Manager, National NAGPRA Program, National Park Service, 1849 C Street NW., Washington, DC 20240, (202) 354–2204.

SUPPLEMENTARY INFORMATION:

I. Background
II. Calculation of Adjustment
III. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation With Indian Tribes (E.O. 13175)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)
  L. Clarity of This Regulation
  M. Administrative Procedure Act

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) ("the Act"). The Act requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch-up" adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

This rule adjusts the following civil monetary penalties:

CFR Citation	Description of the penalty	Current penalty	Catchup adjustment	Adjusted penalty
43 CFR 10.12(g)(2)	Failure of Museum to Comply	$5,000	$1,428	$6,428
43 CFR 10.12(g)(3)	Continued Failure to Comply Per Day	1,000	268	1,268

II. Calculation of Adjustment

The Office of Management and Budget (OMB) issued guidance on calculating the catch-up adjustment. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* Under this guidance, the Department has identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI0–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

III. Procedural Requirements

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Adjustment Act of 2015 requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. An interim final rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this final rule.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that.

K. Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Administrative Procedure Act

The Act requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties no later than August 1, 2016. To comply with the Act, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for prior public comment. The Office of the Secretary finds that there is good cause to promulgate this rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. Also, the Office of the Secretary is promulgating this final rule to implement the statutory directive in the Act, which requires agencies to publish an interim final rule and to update the civil penalty amounts by applying a specified formula. The Office of the Secretary has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule. Thus, pre-promulgation notice and public comment is impracticable and unnecessary.

List of Subjects in 43 CFR Part 10

Administrative practice and procedure, Hawaiian Natives, Historic preservation, Indians—claims, Indians—lands, Museums, Penalties, Public lands, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the Office of the Secretary amends 43 CFR part 10 as follows.

PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION REGULATIONS

■ 1. The authority citation for part 10 continues to read as follows:

Authority: 16 U.S.C. 470dd; 25 U.S.C. 9, 3001 *et seq.*

§ 10.12 [Amended]

■ 2. In § 10.12:

■ a. In paragraph (g)(2) introductory text, remove "$5,000" and add in its place "$6,428".

■ b. In paragraph (g)(3), remove "$1,000" and add in its place "$1,268".

Dated: June 8, 2016.

Michael Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–15168 Filed 6–27–16; 8:45 am]

BILLING CODE 4310–EJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[16X.LLWO310000.L13100000.PP0000]

RIN 1004–AE46

Onshore Oil and Gas Operations—Civil Penalties Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's regulations governing onshore oil and gas operations as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the "Act"). The adjustments made by this interim final rule constitute the initial catch-up adjustments contemplated by the Act, and are consistent with applicable Office of Management and Budget (OMB) guidance.

DATES: As required by the Act, this rule is effective on July 28, 2016. Comments will be accepted until August 29, 2016.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for 1004–AE46 and follow the instructions for submitting comments.
- *Mail:* Director (630), Bureau of Land Management, U.S. Department of the Interior, 1849 C St. NW., Washington, DC 20240, Attention: 1004–AE46.
- *Hand Delivery, or Courier:* U.S. Department of the Interior, Bureau of Land Management, 20 M St. SE., Room 2134LM, Attention: Regulatory Affairs, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Steven Wells, Division Chief, Fluid Minerals Division, 202–912–7143, for information regarding the BLM's Fluid Minerals Program. For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, at 202–912–7442. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, seven days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Background
II. Calculation of Adjustment
III. Procedural Requirements
  A. Regulatory Planning and Review (E.O. 12866 and 13563)
  B. Regulatory Flexibility Act
  C. Small Business Regulatory Enforcement Fairness Act
  D. Unfunded Mandates Reform Act
  E. Takings (E.O. 12630)
  F. Federalism (E.O. 13132)
  G. Civil Justice Reform (E.O. 12988)
  H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)
  I. Paperwork Reduction Act
  J. National Environmental Policy Act
  K. Effects on the Energy Supply (E.O. 13211)
  L. Clarity of This Regulation
  M. Administrative Procedure Act

I. Background

On November 2, 2015, the President signed the Act into law (Sec. 701 of Pub. L. 114–74). It requires all Federal agencies to review their existing regulations and adjust the level of civil monetary penalties found in those regulations for inflation. The Act contemplates two adjustments—an initial "catch-up" adjustment through rulemaking from the date the penalty in question was established to present day, and annual adjustments for inflation thereafter. The purpose of these adjustments is to maintain the deterrent effect of civil penalties found in existing regulations, in order to further the policy goals of the underlying statutes. The BLM has reviewed its existing regulations and determined that only the civil monetary penalties found at 43 CFR 3163.2 are subject to the Act's requirements.

Once penalties subject to the Act have been identified, the Act specifies the formula and format to be used to adjust those amounts. (Section 701(b)) The adjustments contemplated by the Act are based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in 1987, the year the penalties were established by regulation, and the October 2015 CPI–U, so the catch-up adjustment multiplier is 2.06278 for all penalties. The Act caps adjustments at 150 percent, and Section 701(b)(1)(D) of the Act specifically requires that adjustments be promulgated as an interim final rule. The Act does not provide BLM with discretion with respect to either of these provisions.

The adjustments made by this interim final rule constitute the initial "catch-up" adjustment contemplated by the Act and subsequent guidance from OMB, and include the following changes to the penalties provided by existing regulations:

CFR citation	Description of the penalty	Current penalty	Catchup adjustment	Adjusted penalty
43 CFR 3163.2(a)	Failure to comply	$500	$531	$1,031
43 CFR 3163.2(b)	If corrective action is not taken	5,000	5,314	10,314
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	500	531	1,031
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	10,000	10,628	20,628
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase.	25,000	26,570	51,570
43 CFR 3163.2(g)(1)	Initial penalty under 43 CFR 3163.2(a) for a major violation.	500	531	1,031
43 CFR 3163.2(g)(1)	Maximum penalty under 43 CFR 3163.2(a) for a major violation.	1,000	1,063	2,063
43 CFR 3163.2(g)(1)	Initial penalty under 43 CFR 3163.2(b) for a major violation.	5,000	5,314	10,314
43 CFR 3163.2(g)(1)	Maximum penalty under 43 CFR 3163.2(b) for a major violation.	10,000	10,628	20,628
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(d) for a major violation	500	531	1,031
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(e) for a major violation	10,000	10,628	20,628
43 CFR 3163.2(g)(1)	Penalty under 43 CFR 3163.2(f) for a major violation	25,000	26,570	51,570

CFR citation	Description of the penalty	Current penalty	Catchup adjustment	Adjusted penalty
43 CFR 3163.2(g)(2)(iii)	Initial penalty under 43 CFR 3163.2(a) for a minor violation.	50	53	103
43 CFR 3163.2(g)(2)(iii)	Initial penalty under 43 CFR 3163.2(b) for a minor violation.	500	531	1,031
43 CFR 3163.2(g)(2)(iii)	Maximum penalty under 43 CFR 3163.2(a) for a minor violation.	100	106	206
43 CFR 3163.2(g)(2)(iii)	Maximum penalty under 43 CFR 3163.2(b) for a minor violation.	1,000	1,063	2,063

II. Calculation of Adjustment

OMB issued guidance on calculating the catch-up adjustment in accordance with the Act. *See* February 24, 2016, Memorandum for the Heads of Executive Departments and Agencies, from Shaun Donovan, Director, Office of Management and Budget, re: *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* Under this guidance, the Department of the Interior has identified applicable civil monetary penalties and calculated the catch-up adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant. Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Act requires agencies to adjust civil penalties with an initial catch-up adjustment through an interim final rule. Since an interim final rule does not include first publishing a proposed rule, the RFA does not apply to this final rule.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This rule will potentially affect individuals and companies who hold leases on Federal or Indian lands. The BLM believes that the vast majority of potentially affected entities will be small businesses as defined by the Small Business Administration. However, the BLM does not believe the rule will pose a significant economic impact on the industry, including any small entities, for two reasons. First, any lessee can avoid being assessed civil penalties by operating in compliance with BLM rules and regulations. Second, payments for penalties adjusted as a result of this rule will be negligible compared with the $23 billion worth of crude oil and natural gas produced from Federal and Indian leases last year.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (For further information see 43 CFR 46.210(i).) We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. Therefore, a Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;
(b) Use the active voice to address readers directly;
(c) Use common, everyday words and clear language rather than jargon;
(d) Be divided into short sections and sentences; and
(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful.

M. Administrative Procedure Act

The Act requires agencies to publish interim final rules by July 1, 2016, with an effective date for the adjusted penalties no later than August 1, 2016. To comply with the Act, we are issuing these regulations as an interim final rule and are requesting comments post-promulgation. Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for prior public comment.

The BLM is promulgating this rule as an interim final rule because the Act expressly directs us to do so by July 1, 2016. The BLM also finds that there is good cause to promulgate this rule without notice and public procedure for two reasons. First, it would not be possible to meet the deadlines imposed by the Act if the BLM were first to publish a proposed rule, allow the public sufficient time to submit comments, and analyze those comments, before publishing a final rule. Also, since the Act does not give the BLM any discretion to vary the amount of the adjustment for any given penalty to reflect any views or suggestions provided by commenters, it would serve no purpose to provide an opportunity for pre-promulgation public comment on this rule. Thus, pre-promulgation notice and public comment is impracticable and unnecessary.

List of Subjects in 43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

For the reasons given in the preamble, the BLM amends Chapter II of Title 43 of the Code of Federal Regulations as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3163—Noncompliance, Assessments, and Penalties

§ 3163.2 [Amended]

■ 2. In § 3163.2:
■ a. In paragraph (a), remove "$500" and add in its place "$1,031".
■ b. In paragraph (b), remove "$5,000" and add in its place "$10,314".
■ c. In paragraph (d), remove "$500" and add in its place "$1,031".
■ d. In paragraph (e) introductory text, remove "$10,000" and add in its place "$20,628".
■ e. In paragraph (f) introductory text, remove "$25,000" and add in its place "$51,570".
■ f. In paragraph (g)(1), remove "$500" each place that it occurs and add in its place "$1,031"; remove "$5,000" and add in its place "$10,314"; remove "$1,000" each place that it occurs and add in its place "$2,063"; remove "$10,000" each place that it occurs and add in its place "$20,628"; remove "$25,000" and add in its place "$51,570".
■ g. In paragraph (g)(2)(iii), remove "$50" and add in its place "$103"; remove "$500" and add in its place "$1,031"; remove "$100" and add in its place "$206"; remove "$1,000" and add in its place "$2,063".

Janice M. Schneider,
Assistant Secretary, Land and Minerals Management.

[FR Doc. 2016–15129 Filed 6–27–16; 8:45 am]
BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 11

[Docket No. FWS–HQ–LE–2016–0045; FF09L00200–FX–LE18110900000]

RIN 1018–BB32

Civil Penalties; Inflation Adjustments for Civil Monetary Penalties

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is revising our

civil procedure regulations. The regulations provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service. We are issuing this interim rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation in the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties as necessary for inflation according to a formula specified in the Inflation Adjustment Act. This interim rule also revises the authority citation of part 11, updates the scope of the regulations, and corrects the address for the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior.

DATES: This interim rule is effective July 28, 2016. We will accept comments on this interim rule received or postmarked on or before August 29, 2016.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking portal* at: *http://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–HQ–LE–2016–0045.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–HQ–LE–2016–0045; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: BPHC, Falls Church, VA 22041–3803.

We will not accept email or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information that you provide to us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Paul Beiriger, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74) (Inflation Adjustment Act). The Inflation Adjustment Act requires Federal agencies to adjust the level of civil monetary penalties with an initial "catch up" adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Public Law 114–74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provides for an initial "catch up adjustment" to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This interim rule adjusts, in accordance with the Inflation Adjustment Act, the maximum amount of each statutory penalty that may be imposed for violations of Service-administered statutes and their implementing regulations. Section 11.33 identifies the applicable Service-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision. The adjusted penalty amounts are applicable to civil penalties assessed after the Inflation Adjustment Act takes effect.

The Inflation Adjustment Act provides for determining the initial catch up adjustment by first determining the cost-of-living adjustment (COLA), which is defined in section 5 of the Inflation Adjustment Act as the percentage (if any) for each civil monetary penalty by which the Consumer Price Index (CPI) for the month of October 2015 exceeds the CPI for the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law other than this Act. The Inflation Adjustment Act further provides that the initial catch up adjustment shall not exceed 150 percent of the amount of that civil monetary penalty on the date of the enactment of the Inflation Adjustment Act. The CPI is defined in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as the CPI for all-urban consumers published by the Department of Labor.

Once the COLA is determined, the current civil penalty is adjusted accordingly. For instance, the current maximum civil penalty amount under the Bald and Golden Eagle Protection Act (BGEPA) is $5,000, see 16 U.S.C. 668(b), which was last adjusted in 1972. The CPI in October 1972 was 42.3 as compared to the CPI in October 2015, which was 237.838. This represents an increase of over 150 percent, but since the Inflation Adjustment Act caps the initial catch up adjustment at 150 percent, the COLA adjustment for civil penalties under BGEPA will be 150 percent. Thus, the current civil penalty of $5,000 under BGEPA will increase to $12,500 once this regulation becomes effective, as described below.

OMB issued a memorandum, M–16–06, entitled "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," which provides in Table A the civil penalty catch-up adjustment multiplier by calendar year. The Appendix to OMB's memorandum provides step-by-step instructions for determining the catch up adjustment, and the Service determined the adjustments accordingly.

Public Comments

You may submit your comments and materials concerning this interim rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in **DATES**. If you submit information via *http://www.regulations.gov,* your entire submission, including any personal identifying information, will be posted on the Web site. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this interim rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Office of Law Enforcement (see **FOR FURTHER INFORMATION CONTACT**).

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this interim rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Inflation Adjustment Act requires agencies to adjust civil penalties with an initial catch up adjustment through an interim rule. An interim rule does not include first publishing a proposed rule. Thus, the RFA does not apply to this rule.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This interim rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this interim rule will not "significantly or uniquely" affect small governments.

a. This interim rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required.

We are the lead agency for enforcing numerous conservation acts and executive orders, for regulating wildlife trade through the declaration process, for issuing permits to conduct activities affecting wildlife and their habitats, and for carrying out U.S. obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). No small government assistance or impact is expected as a result of this interim rule.

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

This interim rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this interim rule does not have significant takings implications. Under Executive Order 12630, this interim rule does not affect any constitutionally protected property rights. This interim rule has no private property takings implications as defined in Executive Order 12630. This executive order specifically exempts civil procedures for violations of law.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this interim rule does not have significant Federalism effects. A federalism summary impact statement is not required. This interim rule will not have a substantial direct effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Department of the Interior has determined that this interim rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The purpose of this interim rule is to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This interim rule does not contain any information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

This interim rule has been analyzed under the criteria of the National Environmental Policy Act (NEPA) and part 516, chapter 8 of the Departmental Manual (DM) (516 DM 8). This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. Neither an environmental impact statement nor an environmental assessment is required. This interim rule is categorically excluded from further NEPA requirements, under 43 CFR 46.210. This categorical exclusion addresses policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no adverse effects. For violations of certain laws and regulations enforced by the Service, individual tribal members are subject to the same civil procedures as other individuals.

Executive Order 13211 (Energy Supply, Distribution, or Use)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This interim rule applies only to U.S. Government civil procedures, it is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Administrative Procedure Act

The Inflation Adjustment Act requires Federal agencies to publish interim rules by July 1, 2016, with an effective date for the adjusted penalties no later than August 1, 2016. To comply with the Inflation Adjustment Act, we are issuing these regulations as an interim rule and are requesting comments after publication. Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for prior public comment. The Service finds that there is good cause to issue this interim rule without first providing for public comment. It would not be possible to meet the deadlines imposed by the Inflation Adjustment Act if we were to first publish a proposed rule, allow the public sufficient time to submit comments, analyze the comments, and publish a final rule. The Service is issuing this interim rule to implement the statutory directive in the Inflation Adjustment Act, which requires agencies to publish an interim rule and to update the civil penalty amounts by applying a specified formula. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment prior to publication of this rule. Thus, pre-publication notice and public comment is impracticable and unnecessary. This rule will also update the address for the Office of Hearings and Appeals in sections 11.15, 11.25, and 11.26. Since these updates are merely ministerial, we find that pre-publication notice and public comment with respect to those revisions is unnecessary.

List of Subjects in 50 CFR Part 11

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

Regulation Promulgation

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

PART 11—CIVIL PROCEDURES

■ 1. The authority citation for part 11 is revised to read as follows:

Authority: 16 U.S.C. 470aa–470mm, 470aaa–470aaa–11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. Revise § 11.2 to read as follows:

§ 11.2 Scope of regulations.

The regulations contained in this part apply only to actions arising under the following laws and regulations issued thereunder:

(a) Lacey Act, 18 U.S.C. 42–43;

(b) Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;*

(c) Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d;

(d) Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.;*

(e) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.;*

(f) African Elephant Conservation Act, 16 U.S.C. 4201 *et seq.;*

(g) Rhinoceros and Tiger Conservation Act, 16 U.S.C. 5301 *et seq.;*

(h) Archaeological Resources Protection Act, 16 U.S.C. 470aa *et seq.;*

(i) Paleontological Resources Protection Act, 16 U.S.C. 470aaa *et seq.;*

(j) The Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 *et seq.;*

(k) Recreational Hunting Safety Act of 1994, 16 U.S.C. 5201 *et seq.;* and

(l) Wild Bird Conservation Act, 16 U.S.C. 4901 *et seq.*

■ 3. Revise § 11.15 to read as follows:

§ 11.15 Request for a hearing.

Except where a right to request a hearing is deemed to have been waived as provided in § 11.11, the respondent may, within 45 calendar days from the date of the notice of assessment referred to in § 11.14, file a dated, written request for a hearing with the Departmental Cases Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101.

■ 4. Amend § 11.25 by revising paragraph (a) to read as follows:

§ 11.25 Appeal.

(a) Either the respondent or the Director may seek an appeal from the decision of an administrative law judge rendered subsequent to January 1, 1974, by the filing of a "Notice of Request for Appeal" with the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

* * * * *

■ 5. Revise § 11.26 to read as follows:

§ 11.26 Reporting service.

Copies of decisions in civil penalty proceedings instituted under statutes referred to in subpart A of this part and rendered subsequent to June 3, 1970, may be obtained by letter of request addressed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 351 South West Temple, Suite 6.300, Salt Lake City, Utah 84101. Fees for this service shall be as established by the Director of that Office.

■ 6. Add a new subpart D to part 11 to read as follows:

Subpart D—Civil Monetary Penalty Inflation Adjustments

Sec.
11.31 Definitions.
11.32 Purpose and scope.
11.33 Adjustments to penalties.
11.34 Subsequent adjustments.

Subpart D—Civil Monetary Penalty Inflation Adjustments

§ 11.31 Definitions.

(a) *Civil monetary penalty* means any penalty, fine, or other sanction that:

(1)(i) Is for a specific monetary amount as provided by Federal law; or

(ii) Has a maximum amount provided for by Federal law;

(2) Is assessed or enforced by an agency pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

(b) *Inflation Adjustment Act* means the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, November 2, 2015, 129 Stat. 584, 28 U.S.C. 2461 note).

§ 11.32 Purpose and scope.

The purpose of this part is to make the inflation adjustment, described in and required by the Inflation Adjustment Act, of each civil monetary penalty provided by law within the jurisdiction of the U.S. Fish and Wildlife Service.

§ 11.33 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the U.S. Fish and Wildlife Service are adjusted as follows:

Law	Citation	Type of violation	Maximum civil monetary penalty
(a) African Elephant Conservation Act	16 U.S.C. 4224(b)	Any violation	$9,893
(b) Bald and Golden Eagle Protection Act	16 U.S.C. 668(b)	Any violation	12,500
(c) Endangered Species Act of 1973	16 U.S.C. 1540(a)(1)	(1) Knowing violation of section 1538	49,467
		(2) Other knowing violation	23,744
		(3) Any other violation	1,250
(d) Lacey Act Amendments of 1981	16 U.S.C. 3373(a)	(1) Violations referred to in 16 U.S.C. 3373(a)(1).	25,000
		(2) Violations referred to in 16 U.S.C. 3373(a)(2).	625
(e) Marine Mammal Protection Act of 1972	16 U.S.C. 1375	Any violation	25,000
(f) Recreational Hunting Safety Act of 1994	16 U.S.C. 5202(b)	(1) Violation involving use of force or violence or threatened use of force or violence.	15,909
		(2) Any other violation	7,954
(g) Rhinoceros and Tiger Conservation Act of 1998.	16 U.S.C. 5305a(b)(2)	Any violation	17,403
(h) Wild Bird Conservation Act	16 U.S.C. 4912(a)(1)	(1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911.	41,932
		(2) Violation of section 4910(a)(3)	20,127
		(3) Any other violation	839

§ 11.34 Subsequent adjustments.

The Secretary of the Interior or his or her designee will, every year after August 1, 2016, make the inflation adjustment described in and required by the Inflation Adjustment Act of each civil monetary penalty provided by law and within the jurisdiction of the U.S. Fish and Wildlife Service. Each annual adjustment will be reflected in the table in § 11.33.

Dated: June 21, 2016.

Michael J. Bean,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–15268 Filed 6–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160202068–6532–02]

RIN 0648–XE425

Fisheries of the Northeastern United States; Small-Mesh Multispecies Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule modifies the specifications for northern and southern red hake for fishing years 2016 and 2017. This action is necessary to implement the Council's recommended measures in response to updated scientific information. These final specifications are intended to help achieve sustainable yield and prevent overfishing on these two red hake stocks.

DATES: Effective June 28, 2016, until the effective date of the 2018–19 annual specifications and management measures, which will publish in the **Federal Register**.

ADDRESSES: Copies of the specifications document, consisting of an Environmental Assessment (EA) and other supporting documents, are available from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: *www.greateratlantic.fisheries.noaa.gov/* or *www.nefmc.org.* Copies of the small entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Policy Analyst, (978) 281–9144.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages the small-mesh multispecies fishery primarily through a series of exemptions from the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is composed of five stocks of three species of hakes (northern and southern silver hake, northern and southern red hake, and offshore hake). It is managed separately from the other stocks of groundfish such as cod, haddock, and flounders, primarily because the fishery uses small mesh and modified nets that do not generally result in the catch of these other stocks. Amendment 19 to the Northeast Multispecies FMP (April 4, 2013; 78 FR 20260) established a process for setting the small-mesh multispecies catch specifications, as well as set the specifications for the 2012–2014 fishing years. On May 28, 2015, NMFS published specifications for the 2015–2017 fishing years, based on stock assessment updates using data through the spring 2014 survey (80 FR 30379). The Northeast Fisheries Science Center completed a stock assessment update in 2015, using data through the 2015 spring survey. The 2015 update indicates that the northern red hake stock is increasing in biomass, while the southern stock is decreasing.

The purpose of this action is to modify the northern and southern red hake specifications for the 2016 and 2017 fishing years. The Council recommended these changes in response to its review of the 2015 assessment update. The 2015 stock assessment update showed an increase in the northern red hake stock and a decrease in the southern red hake stock; however, the reasons for the decline in the southern stock area are unclear. In response to the updated stock assessment, the Council recommends modifications to the annual catch limits and total allowable landings limits.

Final Measures

This rule increases the northern red hake and decreases the southern red hake 2016 and 2017 annual catch limits and total allowable landings limits (Table 1), consistent with the stock assessment update and the Council's recommendation. The increase to the northern stock specifications will reduce unnecessary discards by delaying a reduction in the possession limits. This action will benefit the fishery without increasing the risk of overfishing. The decrease in the southern stock specifications is necessary to reduce the risk of overfishing, even though recent landings are approximately 20 percent below the revised level of total allowable landings (Table 2).

TABLE 1—SUMMARY OF THE REVISED 2016 AND 2017 RED HAKE SPECIFICATIONS, IN METRIC TONS

	Northern red hake		Southern red hake	
	Existing	Revised	Existing	Revised
Overfishing Limit	331	556	3,400	1,816
Acceptable Biological Catch	287	496	3,179	1,717
Annual Catch Limit (ACL)	273	471	3,021	1,631
Total Allowable Landings (TAL)	104.2	120	1,309.4	746

TABLE 2—COMPARISON OF REVISED 2016–2017 RED HAKE SPECIFICATIONS AND 2014 CATCH AND LANDINGS, IN METRIC TONS

	Northern red hake	Southern red hake
Revised ACL	471	1,631
2014 Catch	278	1,277
% of Revised ACL	56%	74%
Revised TAL	120	746
2014 Landings	74	603
% of Revised TAL	62%	81%

Comments and Responses

On April 7, 2016, NMFS published proposed specifications for public notice and comment. NMFS did not receive any comments in response to the proposed rule.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the small-mesh multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is exempt from review under E.O. 12866 because this action contains no implementing regulations.

The Assistant Administrator finds good cause under the authority of 5 U.S.C. 553(d)(3) to waive the 30-day delay of the effective date. Because the fishing year began on May 1, 2016, delaying the effectiveness of this action, particularly the increase in the northern red hake catch limits, would not be in the best interest of the fishery resource or vessels fishing for small-mesh multispecies. The intent of this action is to allow the fishery to benefit from the increase in the northern red hake biomass by increasing the overall catch limits for the fishery. This action will also help to reduce red hake discards by ensuring that the possession limits are not reduced sooner than necessary. The accountability measures for the fishery require that the possession limits be reduced once certain harvest triggers are met. If the 30-day delay in the effective date stands, there is a risk that early-season fishing effort on the northern red hake stock could trigger a reduction in the possession limits before the increase in overall catch limits contained in this final rule take effect. In 2012 and 2013, northern red hake catch rates exceeded the Annual Catch Limits (ACL) and Acceptable Biological Catch (ABC) and the possession limit was reduced to the incidental level earlier than anticipated. Such a situation could cause economic hardship for fishermen by restricting them to a lower possession limit until the higher catch limits contained in this rule take effect and the higher possession limits are re-instated. Therefore, having the increased catch limits take effect upon publication will optimize the benefits to the industry by extending the season and will benefit the resource by helping to prevent excess discards and overages to the ACL and ABC.

In addition, making the measures in this final rule effective upon publication will assist in reducing the risk of overfishing the southern red hake stock, even though the fishery is not expected to exceed the reduced catch limits.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none was prepared.

There are no new reporting or recordkeeping requirements contained in any of the final measures included in this action.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 22, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–15202 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140904754–5188–02]

RIN 0648–BG08

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2015–2016 Biennial Specifications and Management Measures; Inseason Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces inseason changes to management measures in the Pacific Coast groundfish fisheries. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCGFMP), is intended to allow fisheries to attain their allocations and maintain year-round fishing opportunities while keeping harvest within the annual catch limit (ACL) for sablefish north 36° N. lat.

DATES: This final rule is effective June 28, 2016.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, phone: 206–526–6147, fax: 206–526–6736, or email: *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at *https://www.federalregister.gov.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.* Copies of the final environmental impact statement (FEIS) for the Groundfish Specifications and Management Measures for 2015–2016 and Biennial Periods Thereafter are available from Chuck Tracy, Acting Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

Background

Changes to Trip Limits the Limited Entry Fixed Gear and Open Access Sablefish Daily Trip Limit Fisheries North of 36° N. lat.

The best available fisheries information indicates that catch of sablefish in the commercial non-trawl fisheries north of 36° N. lat. in 2016 will be higher than anticipated. The Council considered updated projections and the status of ongoing groundfish fisheries at its March 9–14, 2016, and April 9–14, 2016, meetings. The Council considered 2015 fishery harvest estimates and fishery models, updated with the best estimate reports from the Pacific Fishery Information Network through February 28, 2016.

At its March meeting, the Council considered updated projections, indicating that sablefish landings through the end of the year would exceed the sablefish allocation in the limited entry fixed gear daily trip limit (DTL) fishery north of 36° N. lat. Projected landings in the limited entry fixed gear DTL fishery north of 36° N. lat. vary based on assumptions on the price per pound. If no action is taken—and this higher than anticipated catch continues in the limited entry fixed gear DTL fishery—then projected landings range from 90 percent of the allocation (low price assumption) to over 100 percent of the allocation (high price assumption) through the end of the year. In recent years, the Council has taken a precautionary approach to setting trip limits at the start of the year. Setting trip limits to target approximately 90 percent attainment of the allocation allows for flexibility to increase trip limits later in the year if harvest remains at or lower than anticipated levels, and also reduces the risk of early closure if catches are higher than anticipated. The Council considered a modest decrease to the weekly limit in the limited entry fixed gear DTL fishery north of 36° N. lat. With a slightly smaller weekly limit, harvest estimates through the end of the year were reduced to between 81 and 93 percent of the allocation (under low and high price per pound assumptions, respectively).

The Council recommended and NMFS is implementing a reduction in the weekly limit for sablefish in the limited entry fixed gear fishery north of 36° N. lat. from "1,275 lb per week, not to exceed 3,375 lb per two months" to "1,125 lb per week, not to exceed 3,375 lb per two months."

At its April meeting, the Council considered 2015 fishery performance, status of ongoing fisheries in 2016, updated projections, and requests from industry regarding the open access DTL fishery north of 36° N. lat. Harvest of sablefish in the open access DTL fishery north of 36° N. lat. exceeded its allocation in 2015. Industry raised concerns that participation levels seen in 2015 may further increase in 2016 due to a predicted poor salmon fishing season and lack of a Dungeness crab fishery off California. If no action is taken and this higher than anticipated catch continues in the open access DTL fishery, landings through the end of the year are projected to be 70 percent of the allocation. The Council considered these updated projections, and concerns and recommendations from industry representatives. Based on public testimony, there is anecdotal evidence of a sharp increase in participation in this fishery, particularly in southern Oregon and northern California ports. Industry representatives recommended a precautionary decrease in trip limits beginning July 1 to slow landings and maintain year-round fishing opportunities. The Council considered a precautionary reduction to open access DTL trip limits to maintain harvest opportunities throughout the year even under much higher participation levels.

The Council recommended and NMFS is implementing a reduction in the trip limit for sablefish in the open access fishery north of 36° N. lat. from "300 lb per day, or one landing per week of up to 1,000 lb, not to exceed 2,000 lb per two months" to "300 lb per day, or one landing per week of up to 850 lb, not to exceed 1,700 lb per two months," beginning July 1, 2016.

Decreases to trip limits in the limited entry fixed gear and open access DTL fisheries north of 36° N. lat. are intended to allow year-round fishing opportunities and reduce the risk of closure as occurred in 2015 (when the limited entry fixed gear and open access DTL fisheries north of 36° N. lat. were both closed on November 1, reducing the season length by two months).

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective June 28, 2016.

The Council recommended that these changes be implemented as quickly as possible to reduce harvest of sablefish in the limited entry fixed gear and open access DTL fisheries north of 36° N. lat. based in information available at its March and April meetings. There was not sufficient time after those meetings to draft this document and undergo proposed and final rulemaking before this action needs to be in effect. For the action to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, the sablefish ACLs in accordance with the PCGFMP and applicable law. These adjustments to management measures must be implemented in a timely manner to prevent the 2016 sablefish north 36° N. lat. allocations from being exceeded and help ensure year-round fishing opportunities, consistent with objectives of the PCGFMP. No aspect of this action is controversial, and changes of this nature were anticipated in the groundfish biennial harvest specifications and management measures established for 2015–2016.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Reporting and recordkeeping requirements.

Dated: June 22, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. Table 2 (North) and 2 (South) to part 660, subpart E, are revised to read as follows:

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Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply – Read §§660.10 through 660.399 before using this table

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TABLE 2 (North)

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]**:**							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 42°00' N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish**[2/] **& Darkblotched rockfish**	4,000 lb/ 2 months					
5	**Pacific ocean perch**	1,800 lb/ 2 months					
6	**Sablefish**	1,275 lb/week, not to exceed 3,375 lb/ 2 months			1,125 lb/week, not to exceed 3,375 lb/ 2 months		
7	**Longspine thornyhead**	10,000 lb/ 2 months					
8	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
9 10 11 12 13 14	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish**[3/]	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
15	**Whiting**	10,000 lb/ trip					
16	**Minor Shelf Rockfish**[2/]**, Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
17	**Canary rockfish**	CLOSED					
18	**Yelloweye rockfish**	CLOSED					
19	**Minor Nearshore Rockfish & Black rockfish**						
20	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue rockfish[4/]					
21	42°00' N. lat. - 40°10' N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish				6,000 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish	
22	**Lingcod**[5/]	200 lb/2 months		1,200 lb/ 2 months			600 lb/ month 200 lb/ month
23	**Pacific cod**	1,000 lb/ 2 months					
24	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
25	**Longnose skate**	Unlimited					
26	**Other Fish**[6/] **& Cabezon in Oregon and California**	Unlimited					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish and splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 7012016

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 1,375 lb may be blackgill rockfish			40,000 lb/ 2 months, of which no more than 1,600 lb may be blackgill rockfish		
4	**Splitnose rockfish**	40,000 lb/ 2 months					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	1,275 lb/week, not to exceed 3,375 lb/ 2 months			1,125 lb/week, not to exceed 3,375 lb/ 2 months		
7	South of 36°00' N. lat.	2,000 lb/ week					
8	**Longspine thornyhead**	10,000 lb/ 2 months					
9	**Shortspine thornyhead**						
10	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
11	South of 34°27' N. lat.	3,000 lb/ 2 months					
12 13 14 15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	5,000 lb/ month South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line, are not subject to the RCAs.					
18	**Whiting**	10,000 lb/ trip					
19	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish (including Bocaccio and Chilipepper between 40°10' - 34°27' N. lat.)**						
20	40°10' N. lat. - 34°27' N. lat.	Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb may be any species other than chilipepper.					
21	South of 34°27' N. lat.	4,000 lb/ 2 months	CLOSED	4,000 lb/ 2 months			
22	**Chilipepper**						
23	40°10' N. lat. - 34°27' N. lat.	Chilipepper included under minor shelf rockfish, shortbelly, widow rockfish and bocaccio limits - - See above					
24	South of 34°27' N. lat.	2,000 lb/ 2 months, this opportunity only available seaward of the non-trawl RCA					
25	**Canary rockfish**	CLOSED					
26	**Yelloweye rockfish**	CLOSED					
27	**Cowcod**	CLOSED					
28	**Bronzespotted rockfish**	CLOSED					
29	**Bocaccio**						
30	40°10' N. lat. - 34°27' N. lat.	Bocaccio included under Minor shelf rockfish, shortbelly, widow rockfish & chilipepper limits - - See above					
31	South of 34°27' N. lat.	750 lb/ 2 months	CLOSED	750 lb/ 2 months			

TABLE 2 (South)

Table 2 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
32	**Minor Nearshore Rockfish & Black rockfish**						
33	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
34	Deeper nearshore						
35	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
36	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
37	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
38	**Lingcod[4/]**	200 lb/ 2 months	CLOSED	800 lb/ 2 months			400 lb/ month 200 lb/ month
39	**Pacific cod**	1,000 lb/ 2 months					
40	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
41	**Longnose skate**	Unlimited					
42	**Other Fish[5/] & Cabezon**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other Fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 3. Table 3 (North) and 3 (South) to part 660, subpart F, are revised to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10′ N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

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		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16′ N. lat.	shoreline - 100 fm line[1/]					
2	46°16′ N. lat. - 42°00′ N. lat.	30 fm line[1/] - 100 fm line[1/]					
3	42°00′ N. lat. - 40°10′ N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	Per trip, no more than 25% of weight of the sablefish landed					
5	**Pacific ocean perch**	100 lb/ month					
6	**Sablefish**	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 850 lb, not to exceed 1,700 lb/ 2 months		
7	**Shortpine thornyheads and longspine thornyheads**	CLOSED					
8 9 10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
11 12 13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14	**Whiting**	300 lb/ month					
15	**Minor Shelf Rockfish[2/], Shortbelly, Widow & Yellowtail rockfish**	200 lb/ month					
16	**Canary rockfish**	CLOSED					
17	**Yelloweye rockfish**	CLOSED					
18	**Minor Nearshore Rockfish & Black rockfish**						
19	North of 42°00′ N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish					
20	42°00′ N. lat. - 40°10′ N. lat.	8,500 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish				6,000 lb/ 2 months, of which no more than 1,200 lb of which may be species other than black rockfish	
21	**Lingcod[5/]**	100 lb/ month		600 lb/ month			100 lb/ month
22	**Pacific cod**	1,000 lb/ 2 months					
23	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
24	**Longnose skate**	Unlimited					
25	**Other Fish[6/] & Cabezon in Oregon and California**	Unlimited					

TABLE 3 (North)

Table 3 (North). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
26	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
27	North	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lbs of salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 200 lb per month combined limit for minor shelf rockfish, widow rockfish and yellowtail rockfish, and not in addition to that limit. Salmon trollers may retain and land up to 1 lingcod per 15 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. This limit only applies during times when lingcod retention is allowed, and is not "CLOSED." This limit is within the per month limit for lingcod described in the table above, and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
28	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
29	North	**Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North) cont'd

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 07012016

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	40°10' N. lat. - 34°27' N. lat.	30 fm line[1/] - 150 fm line[1/]					
2	South of 34°27' N. lat.	60 fm line[1/] - 150 fm line[1/] (also applies around islands)					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 475 lb may be blackgill rockfish			10,000 lb/ 2 months, of which no more than 550 lb may be blackgill rockfish		
4	**Splitnose rockfish**	200 lb/ month					
5	**Sablefish**						
6	40°10' N. lat. - 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,000 lb, not to exceed 2,000 lb/ 2 months			300 lb/ day, or 1 landing per week of up to 850 lb, not to exceed 1,700 lb/ 2 months		
7	South of 36°00' N. lat.	300 lb/ day, or 1 landing per week of up to 1,600 lb, not to exceed 3,200 lb/ 2 months					
8	**Shortpine thornyheads and longspine thornyheads**						
9	40°10' N. lat. - 34°27' N. lat.	CLOSED					
10	South of 34°27' N. lat.	50 lb/ day, no more than 1,000 lb/ 2 months					
11	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/]**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs.					
12							
13		South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 0.44 in (11 mm) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs.					
14							
15							
16							
17	**Whiting**	300 lb/ month					
18	**Minor Shelf Rockfish[2/], Shortbelly, Widow rockfish and Chilipepper**						
19	40°10' N. lat. - 34°27' N. lat.	300 lb/ 2 months	CLOSED	200 lb/ 2 months		300 lb/ 2 months	
20	South of 34°27' N. lat.	1500 lb/ 2 months		1500 lb/ 2 months			
21	**Canary rockfish**	CLOSED					
22	**Yelloweye rockfish**	CLOSED					
23	**Cowcod**	CLOSED					
24	**Bronzespotted rockfish**	CLOSED					
25	**Bocaccio**						
26	40°10' N. lat. - 34°27' N. lat.	200 lb/ 2 months	CLOSED	100 lb/ 2 months		200 lb/ 2 months	
27	South of 34°27' N. lat.	250 lb/ 2 months		250 lb/ 2 months			

TABLE 3 (South)

TABLE 3 (South) cont'd

Table 3 (South). Continued

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
28	**Minor Nearshore Rockfish & Black rockfish**						
29	Shallow nearshore	600 lb/ 2 months	CLOSED	800 lb/ 2 months	900 lb/ 2 months	800 lb/ 2 months	1,000 lb/ 2 months
30	Deeper nearshore						
31	40°10' N. lat. - 34°27' N. lat.	700 lb/ 2 months	CLOSED	700 lb/ 2 months	900 lb/ 2 months		1,000 lb/ 2 months
32	South of 34°27' N. lat.	500 lb/ 2 months		600 lb/ 2 months			
33	California scorpionfish	1,200 lb/ 2 months	CLOSED	1,200 lb/ 2 months			
34	**Lingcod**[4/]	100 lb/ month	CLOSED	400 lb/ month			100 lb/ month
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Other Fish**[5/] **& Cabezon**	Unlimited					
39	**RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
40	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
41	*40° 10' N. lat. - 38° 00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*	*100 fm line[1/] - 150 fm line[1/]*				*100 fm line[1/] - 200 fm line[1/]*
42	*38° 00' N. lat. - 34° 27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
43	*South of 34° 27' N. lat.*	*100 fm line[1/] - 150 fm line[1/] along the mainland coast; shoreline - 150 fm line[1/] around islands*					
44		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31).					
45	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
46	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ POP is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

5/ "Other fish" are defined at § 660.11 and includes kelp greenling, leopard shark, and cabezon in Washington.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

[FR Doc. 2016–15155 Filed 6–27–16; 8:45 a.m.]

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Proposed Rules

Federal Register
Vol. 81, No. 124
Tuesday, June 28, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 347

RIN 3064–AE36

Alternatives to References to Credit Ratings With Respect to Permissible Activities for Foreign Branches of Insured State Nonmember Banks and Pledge of Assets by Insured Domestic Branches of Foreign Banks

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of Proposed Rulemaking ("NPR").

SUMMARY: The FDIC is seeking public comment on a proposed rule to amend its international banking regulations ("Part 347") consistent with section 939A ("section 939A") of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") and the FDIC's authority under section 5(c) of the Federal Deposit Insurance Act ("FDI Act"). Section 939A directs each federal agency to review and modify regulations that reference credit ratings. The proposed rule would amend the provisions of subparts A and B of Part 347 that reference credit ratings. Subpart A, which sets forth the FDIC's requirements for insured state nonmember banks that operate foreign branches, would be amended to replace references to credit ratings in the definition of "investment grade" with a standard of creditworthiness that has been adopted in other federal regulations that conform with section 939A. Subpart B would be amended to revise the FDIC's asset pledge requirement for insured U.S. branches of foreign banks. The eligibility criteria for the types of assets that foreign banks may pledge would be amended by replacing the references to credit ratings with the revised definition of "investment grade." The proposed rule would apply this investment grade standard to each type of pledgeable asset, establish a liquidity requirement for such assets, and subject them to a fair value discount. The proposed rule would also introduce cash as a new asset type that foreign banks may pledge under subpart B and create a separate asset category expressly for debt securities issued by government sponsored enterprises.

DATES: Comments must be received by August 29, 2016.

ADDRESSES: You may submit comments, identified by RIN 3064–AE36, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include the RIN 3064–AE36 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Public Inspection:* All comments received must include the agency name and RIN 3064–AE36 for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/*, including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at 1 (877) 275–3342 or 1 (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Eric Reither, Senior Capital Markets Specialist, Capital Markets Branch, Division of Risk Management Supervision, *EReither@fdic.gov;* Lanu Duffy, Senior International Advisor, International Affairs Branch, Division of Insurance and Research, *LDuffy@fdic.gov;* Catherine Topping, Counsel, *CTopping@fdic.gov;* Benjamin Klein, Senior Attorney, *BKlein@fdic.gov,* Legal Division.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

The intent of the proposed rule is to conform part 347 with section 939A's directive to reduce reliance on credit ratings. By removing references to credit ratings in part 347 and adopting an alternative standard of creditworthiness, the proposed rule would encourage regular, in-depth analysis of the credit risks associated with specific types of securities held by foreign branches of state nonmember banks under subpart A, or pledged for the benefit of the FDIC by the insured U.S. branches of foreign banks under subpart B. The proposed rule supports these objectives by establishing an "investment grade" definition that would be applied in both subparts A and B.

The financial crisis in 2008 highlighted the importance of considering the liquidity of a security when assessing its overall risk. To address this concern, the proposed revisions to the asset pledge requirement in subpart B would include the application of a liquidity standard to the securities pledged to the FDIC by the insured U.S. branches of foreign banks, and would subject such pledged assets to a fair value discount. These amendments would support the objective of the asset pledge requirement, which is to ensure orderly asset liquidation at maximum value in the event such assets need to be liquidated to pay the insured deposits of the U.S. branch of the foreign bank.

II. Background

In the decades prior to the financial crisis in 2008, third party credit risk assessments by nationally recognized statistical ratings organizations ("NRSROs") helped to provide transparency and efficiency to the securities markets. Their assessments of creditworthiness allowed originators and investors to more accurately and readily meet their risk tolerances and investment strategies. Many financial regulations used these external credit risk ratings to set limits on the activities of regulated entities in order to foster safe and sound investment practices. However, during the run up to the crisis many regulated institutions overly relied on the credit risk assessments of NRSROs, often neglecting to do a thorough analysis of their own. At the same time, flaws in the NRSROs' business model (including certain commercial relationships with the originators of securities and strong competition by NRSROs for market share) undermined the accuracy of the credit ratings. Consequently, many investors, including banking organizations, experienced significant losses on securities with ratings that implied credit losses would be very unlikely and minimal. This prompted Congress to enact section 939A, which directs each federal agency to review and modify regulations that reference credit ratings.

Section 939A[1] requires each federal agency to review its regulations that require the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Each agency must modify its regulations identified in the review by removing references to, or requirements of reliance on, credit ratings and substituting appropriate standards of creditworthiness.

Subpart A of Part 347—Foreign Banking and Investment by Insured State Nonmember Banks

Subpart A of part 347, 12 CFR 347.101, *et seq.*, addresses the international banking and investment activities of state nonmember banks, including the establishment and operations of foreign branches and subsidiaries.[2] In general, these regulations implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act[3] regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act[4] regarding insured state nonmember bank investments in foreign entities.

In addition to their general banking powers, banks with foreign branches are permitted to conduct a broad range of investment activities, including investment services and underwriting of debt and equity securities.[5] Under 12 CFR 347.115(b), a foreign branch of a bank may invest in, underwrite, distribute and deal, or trade foreign government obligations that have an investment grade rating, up to an aggregate limit of ten percent of the bank's Tier 1 capital, as calculated under the Basel III capital rules in 12 CFR part 324, subpart C.[6] Section 347.102(o) currently defines "investment grade" to mean a security that is rated in one of the four highest categories by two or more NRSROs or one NRSRO if the security is rated by only one NRSRO.[7]

Subpart B of Part 347—Foreign Banks

The regulations contained in subpart B of part 347 primarily implement provisions of the FDI Act and the International Banking Act ("IBA")[8] concerning insured and noninsured U.S. branches of foreign banks.[9] Each foreign banking organization maintaining an insured branch must comply with specific FDIC asset maintenance[10] and asset pledge requirements under section 5(c) of the FDI Act. These requirements are separate and apart from other capital equivalency requirements of the federal or state licensing authorities.[11] The FDIC no longer insures the deposits accepted by branches of foreign banks, except for deposits made in branches of foreign banks that are insured by operation of the grandfathering provisions of the IBA, as amended by the Foreign Bank Supervision Enhancement Act of 1991 ("FBSEA").[12] The universe of these grandfathered branches is very limited. There are currently only ten insured U.S. branches of foreign banks in operation (four federal branches and six state branches). A foreign bank that has an insured branch must pledge assets for the benefit of the FDIC to protect the DIF in the event the FDIC is obligated to pay the insured deposits of an insured branch under section 11(f) of the FDI Act.[13] Section 347.209(d) provides a list of the types of assets that a foreign bank may pledge for the benefit of the FDIC. In describing certain asset types, 12 CFR 347.209(d) references credit ratings issued by a nationally recognized rating service in connection with a determination of the credit quality of the assets that a foreign bank may pledge.

The proposed amendments and revisions are discussed below, by subpart. The FDIC invites public comment on all aspects of the proposal, including the potential costs and benefits of the proposed rule.[14]

III. Description of the Proposed Revisions to Part 347—International Banking Subpart A—Foreign Banking and Investment by Insured State Nonmember Banks

A. Section 347.102. Definitions

The FDIC's rules in 12 CFR 347.102(o) define the term "investment grade" as a security that is rated in one of the four highest categories by two or more NRSROs; or one NRSRO if the security is rated by only one NRSRO. The proposed rule would amend the definition of "investment grade" by deleting the references to credit ratings and NRSROs. The new definition in the proposed rule would define "investment grade" as a security whose issuer has adequate capacity to meet all financial commitments under the security for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

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[1] Pub. L. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

[2] A state nonmember bank may establish a non-U.S. branch with the approval of the FDIC (12 U.S.C. 1828(d)(2)). National banks must gain the approval of the Board of Governors of the Federal Reserve System ("Federal Reserve") to open a non-U.S. branch. These branches may engage in any activity that is permitted in the United States, as well as those that are usual in connection with the banking business in the foreign country where it is located. State member banks may establish foreign branches with the approval of the Federal Reserve. U.S. banking organizations may also conduct international banking activities through Edge and agreement corporations. (12 U.S.C. 611–631) ("Edge corporations"); (12 U.S.C. 601–604(a) ("agreement corporations").

[3] 12 U.S.C. 1828(d)(2).

[4] 12 U.S.C. 1828(*l*).

[5] The limitations on international investments and the definition of permissible activities found in the FDIC's regulations in part 347 are similar to, but not exactly, those found in Regulation K of the Federal Reserve.

[6] 12 CFR 324.20, *et seq.*

[7] An NRSRO is an entity registered with the U.S. Securities and Exchange Commission as an NRSRO under section 15E of the Securities Exchange Act of 1934. See 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[8] Pub. L. 95–369, 92 Stat. 607 (Sept. 17, 1978) (codified at 12 U.S.C. 3101 *et seq.*).

[9] U.S. branches of foreign banks may be licensed by the Office of the Comptroller of the Currency ("OCC") or by an individual state. The Federal Reserve is required to approve any new foreign bank branch. The Federal Reserve, among other things, is required to certify that the country from which the foreign bank is located subjects its banks, including the applicant, to comprehensive, consolidated supervision. 12 U.S.C. 3105(d).

[10] The FDIC requires that an insured branch of a foreign bank maintain, on a daily basis, eligible U.S. dollar-denominated assets in an amount not less than 106% of the preceding quarter's average book value of the branch's liabilities excluding those due to other offices or wholly owned subsidiaries of the foreign bank. 12 CFR 347.210.

[11] Although U.S. branches and agencies of foreign banks have no capital of their own, those that are federally licensed must deposit cash or eligible securities at approved insured banks to satisfy the "capital equivalency requirement" specified by the IBA. The amount of the deposit is required to be at least 5% of the total liabilities of the branch or agency office, or the capital that would be required if it were a freestanding national bank. 12 U.S.C. 3102(g)(2). The underlying purpose of the IBA provision is to ensure that branches and agencies of a foreign bank maintain a minimum level of unencumbered assets in the United States that would be available in a liquidation of the branch or agency. State-licensed branches and agencies also must meet capital equivalency requirements, which vary from state to state. *See, e.g.,* N.Y. Banking Law § 202–b.

[12] Since the enactment of FBSEA, a foreign bank seeking to accept retail deposits (initial deposits under $250,000) in the United States may do so only by establishing a U.S. subsidiary bank (or savings association) whose deposits are insured by the FDIC. Before FBSEA, a small number of foreign bank branches had obtained FDIC insurance under the provisions of the IBA and thus were permitted to accept retail deposits. These branches (insured branches) are "grandfathered", *i.e.,* they may continue to receive insured retail deposits pursuant to section 6(d)(2) of the IBA (12 U.S.C. 3104(d)(2)).

[13] 12 U.S.C. 1821(f).

[14] The Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") requires that regulations prescribed by the Federal Financial Institutions Examination Council, OCC, FDIC, and Federal Reserve (collectively, the Agencies) be reviewed by the Agencies to identify outdated, unnecessary, or unduly burdensome regulations. The EGRPRA review is currently ongoing, and will be conducted in four separate notices, with each notice focusing on certain categories of regulations. The first notice, published on June 4, 2014, included a review of part 347, subpart A. 79 FR 32172 (June 4, 2014). The FDIC received one comment on part 347, subpart A, where the commenter requested that the Agencies increase the capital-based limits on investments in foreign organizations. The FDIC is considering this comment as part of its EGRPRA review efforts, and not as a part of this proposed rulemaking.

B. Section 347.115. Permissible Activities for a Foreign Branch of an Insured State Nonmember Bank

Section 347.115 defines the particular activities that a foreign branch of an insured state nonmember bank may conduct. These activities are subject to safety and soundness limitations and are limited by the extent to which the activities are consistent with banking practices in the foreign country where the bank maintains a branch. The proposed rule would retain the language of 12 CFR 347.115(b), but § 347.115(b) would be affected by the proposed rule insofar as § 347.115(b) uses the proposed definition of the term "investment grade" in 12 CFR 347.102(o). Section 347.115(b) allows the foreign branch of an insured state nonmember bank to engage in certain types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed ten percent of the bank's Tier 1 capital. More specifically, a foreign branch of a bank may underwrite, distribute and deal, invest in, or trade obligations of the national government of the country in which the branch is located, as well as obligations of political subdivisions of such national government, and certain agencies or instrumentalities of such national government. Furthermore, foreign branches may, subject to the law of the issuing foreign country, underwrite, distribute and deal, invest in, or trade investment grade obligations of other foreign countries, political subdivisions, and certain agencies and instrumentalities. As provided for in the existing rule, if the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

The definition of "investment grade" for obligations of governments other than the host government was adopted in 2005 when the FDIC amended its international banking regulations, part 347.[15] The definition was derived from the limitations and definitions of Regulation K of the Federal Reserve, which governs the international operations of foreign branches of member banks. Under the Federal Reserve regulations, a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold certain government debt obligations only if such obligations are rated investment grade.[16] The Federal Reserve adopted the definition of investment grade in its revisions to Regulation K in 2001. The investment grade rating requirement for obligations of governments other than the host government was considered appropriate because it limited cross-border transfer risk.[17]

The revisions in the proposed rule to the regulatory definition of "investment grade" will remove references to credit ratings consistent with section 939A but will not affect the general consistency between the Federal Reserve's Regulation K and the FDIC's part 347 with regard to permissible activities. For purposes of the proposed rule, an issuer would satisfy this requirement or new standard if the state nonmember bank appropriately determines that the obligor presents low default risk and is expected to make timely payments of principal and interest. The definition addresses the safety and soundness concerns of this activity of foreign branches—namely the exposure of the foreign branch and the DIF to the entity issuing the security—without reference to a credit rating or an NRSRO. The FDIC believes that the proposed standard provides a flexible, straightforward measure of creditworthiness that is consistent with existing policy.

C. Consistency With Other Federal Regulations

The proposed definition of investment grade in 12 CFR 347.102(o) is consistent with the definition of investment grade that was adopted by the FDIC, OCC, and Federal Reserve in the promulgation of regulatory capital rules that implement the Basel III framework ("Basel III capital rules").[18] This definition is also consistent with the non-ratings based, creditworthiness standard applicable to permissible corporate debt securities investments of savings associations adopted by the FDIC in 12 CFR part 362 [19] and the credit quality standards regarding permissible investments for national banks adopted by the OCC under 12 CFR parts 1, 16, and 160.[20] In addition, it is consistent with the final rules adopted by the OCC that remove references to credit ratings from its regulations pertaining to foreign bank capital equivalency deposits for federal branches under 12 CFR 28.15. The OCC's regulations previously allowed for the use of certificates of deposit ("CDs") or bankers' acceptances as part of the deposit if the issuer of the instrument was rated "investment grade" by an internationally recognized rating organization. Under the revised regulation, the issuer of the certificate of deposit or banker's acceptance must have "an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure." [21]

D. Request for Comment

This NPR seeks comment on whether:

- This standard of creditworthiness is sufficient to address safety and soundness concerns of this activity of foreign branches of state nonmember banks regarding exposure to obligations of foreign countries, and
- The proposed revisions would address the FDIC's objective of applying a standard of creditworthiness, other than the exclusive use of credit ratings, that is transparent, well defined, differentiates credit risk, and provides for the timely measurement of changes to the credit profile of the investment.

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[15] 70 FR 17550 (April 6, 2005).

[16] *See* 12 CFR 211.4(a)(2)(C)–(D) (providing that a foreign branch of a member bank may underwrite, distribute, buy, sell, and hold obligations of (1) the national government or political subdivision of any country, where such obligations are rated investment grade, and (2) an agency or instrumentality of any national government where such obligations are rated investment grade and are supported by the taxing authority, guarantee or full faith and credit of that government).

[17] 66 FR 54346 (Oct. 26, 2001).

[18] *See* 78 FR 62018 (Oct. 11, 2013) (Federal Reserve and OCC) (final rule); 78 FR 55340 (Sept. 10, 2013)(interim final rule)(FDIC); 79 FR 20754 (April 14, 2014)(final rule)(FDIC). In finalizing the Basel III capital rules, Federal Reserve and OCC issued a joint final rule, and the FDIC separately issued a substantively identical interim final rule, which was later made final without substantive changes.

[19] *See* Permissible Investments for Federal and State Savings Associations: Corporate Debt Securities, 77 FR 43151 (July 24, 2012).

[20] *See* Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

[21] *See* Alternatives to the Use of External Credit Ratings in the Regulations of the OCC, 77 FR 35253 (June 13, 2012).

IV. Description of the Proposed Revisions to Part 347—International Banking Subpart B—Foreign Banks

A. Section 347.209. Pledge of Assets

The asset pledge requirement in 12 CFR 347.209 applies to insured U.S. branches of foreign banks. There are ten such branches that exist by authority of the statutory grandfathering established by FBSEA.[22] The foreign banks that have branches covered by this grandfathering must pledge assets for the benefit of the FDIC.[23] The amount that each foreign bank must pledge is determined by the supervisory risk posed by each U.S. branch and the U.S. branch's asset maintenance level.[24] The amount of assets that a U.S. branch of a foreign bank must pledge varies from two percent to eight percent of the branch's liabilities and is determined by reference to the risk-based assessment schedule provided in 12 CFR 347.209(b)(1).

FDIC rules in 12 CFR 347.209(d) describe the types of assets that may be pledged, and require that certain of these asset types have credit ratings within the top rating bands of an NRSRO. Under the existing rule, commercial paper may be eligible for pledging purposes if it is rated P–1 or P–2, or their equivalent, by an NRSRO.[25] Municipal general obligations are eligible under the existing rule if they have a credit rating within the top two rating bands of a NRSRO. Notes issued by bank and thrift holding companies, banks, or savings associations must also be rated within the top two rating bands of an NRSRO in order to be eligible under the asset pledge requirement of the existing rule. The other types of eligible assets, which must be U.S. dollar denominated, are: bank CDs with maturities of not greater than one year; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or fully guaranteed by the United States or any agency thereof; banker's acceptances with a maturity not greater than 180 days; and obligations of certain international development banks.[26]

The FDIC's asset pledge requirement has been in place since 1978. The FDIC adopted the current risk-based, asset pledge requirements in part 347 in 2005.[27] The asset pledge requirement was established to provide the DIF protection against losses on insured deposit claims by depositors of U.S. branches of foreign banks. Since the adoption of its initial foreign banking regulation implementing the IBA and FDI Act's requirements, the FDIC has focused on the quality and marketability of assets pledged, as well as the assurance of payment within the United States, in determining whether the assets are acceptable to be pledged.[28] The FDIC has made clear that the essence of the asset pledge requirement is that pledged assets be as free from risk and as liquid as possible in order to provide protection to the DIF.[29]

Under the FDIC's deposit insurance authority in the FDI Act, the FDIC may impose requirements determined to be necessary to mitigate the risks associated with providing deposit insurance to an insured U.S. branch of a foreign bank. Consistent with section 939A and the FDIC's authority in the FDI Act, the proposed rule would revise the categories of assets in 12 CFR 347.209(d) that may be used for pledging. In so doing, the proposed rule would remove the references to credit ratings issued by NRSROs and substitute an investment grade standard to ensure the assets have appropriate credit quality. In addition, the proposed rule would permit only highly liquid assets to be pledged, and would submit these instruments to fair value haircuts. The three instances in subpart B that must be revised contain references not to investment grade ratings, but to the highest subset of rating bands within the investment grade categories established by the ratings agencies. In other words, subpart B embodies a standard for protection of the DIF from the pledged assets that goes beyond that of simply being investment grade. The FDIC believes that adopting the investment grade and highly liquid criteria, as well as the fair value haircut, would ensure that pledged assets continue to provide a high degree of protection to the DIF. The proposed credit and liquidity standards are discussed below.

Credit and Liquidity Standards

Under the proposed rule, instruments falling within the relevant asset categories would be eligible for pledging if they are "investment grade." The proposed rule would add the definition of "investment grade" to the definitions section of subpart B, 12 CFR 347.202. Consistent with the proposed amendment to subpart A of part 347, the proposed rule would define "investment grade" as a security issued by an entity that has adequate capacity to meet financial commitments under the security for the projected life of the security or exposure. To meet this standard for asset pledge purposes, the insured branch or foreign bank would need to determine whether the risk of default by the obligor is low and full and timely repayment of principal and interest is expected. Using this "investment grade" standard as defined would be consistent with existing regulations and policies.[30]

Also, under the proposed rule, instruments falling within the relevant asset categories would be eligible for pledging only if they are "highly liquid." The proposed rule would define "highly liquid" securities as those that:

- Exhibit low credit and market risk;
- are traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; and
- are a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.[31]

A foreign bank would be required to demonstrate that the instrument meets the highly liquid standard.

Fair Value Discount

In addition, the FDIC is proposing that the fair values of the investment grade and highly liquid pledged assets be discounted to reflect the credit risk and market price volatility of the asset. The discounted fair value of the assets would determine the pledged dollar amount. The FDIC would expect that the valuations of the pledged assets be updated at least quarterly. Quarterly valuation updates are consistent with the quarterly valuations currently required in the pledge agreement between each of the foreign banks and the FDIC.[32] The proposed method for discounting fair values is consistent with the haircuts applied to financial collateral pledged to certain transactions under the Basel III capital rules as adopted by the FDIC.[33]

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[22] 12 U.S.C. 3104(d).

[23] The pledged assets must be placed at a depository approved by the FDIC. Generally, each insured branch of the foreign bank must meet the asset pledge requirement separately; however, a foreign bank with more than one insured branch in any state may treat all of its insured branches in the state as one entity for purposes of complying with this requirement. *See* 12 CFR 347.209(b)(5).

[24] 12 CFR 347.209(b). Generally, an insured branch must maintain a level of assets that exceeds 106 percent of its liabilities. 12 CFR 347.210.

[25] P–1 and P–2 are Moody's top two rating bands for short-term obligations.

[26] *See* 12 CFR 347.209(d)(1), (2), (5), and (6).

[27] 70 FR 17550 (April 6, 2005).

[28] *See* 43 FR 60279,60281 (Dec. 27, 1978).

[29] *See* 49 FR 49614, 49615 (Dec. 21, 1984).

[30] The investment grade standard is consistent with that adopted by the FDIC, OCC, and Federal Reserve in their issuance of Basel III capital rules; as adopted by the OCC under 12 CFR parts 1, 16, 28, 160; and as adopted by the FDIC under part 362 for corporate bonds held by savings associations.

[31] The definition of a highly liquid asset is consistent with the definition established in 12 CFR part 252 subpart O Enhanced Prudential Standards for Foreign Banking Organizations (The Federal Reserve's Regulation YY).

Further, the FDIC proposes to include a standardized haircut table, consistent with the Basel III capital rules, to promote simplicity and ease of reference.[34] Under this approach, the applicable haircut would be determined by reference to the asset's risk-weight and remaining maturity.[35] For example, a foreign insured branch may elect to pledge investment grade commercial paper with a fair value of $100,000 and remaining maturity of less than one year. These instruments are risk-weighted at 100 percent under the Basel III capital rules. Under the proposed reference table, the corresponding haircut would be 4 percent; therefore, the amount of the $100,000 asset that would count towards the satisfaction of the asset pledge requirement would be $100,000 multiplied by 0.96 (1 − 0.04), or $96,000. Consistent with the haircut requirements in the risk-based capital rules, pledged assets that receive a zero percent risk weight will generally not require a fair value haircut.[36]

Assets That May Be Pledged

The proposed rule also amends 12 CFR 347.209(d) by adding cash as a new asset type that foreign banks may pledge under subpart B and creating a separate asset category expressly for debt securities issued by government sponsored enterprises ("GSEs"). Cash and securities issued by GSEs are included in the definition of highly liquid assets in the Federal Reserve's regulation prescribing enhanced prudential standards for foreign banking organizations.[37] With respect to debt securities issued by GSEs, the FDIC understands that some insured branches of foreign banks currently pledge such instruments under 12 CFR 347.209(d)(2) because they qualify as obligations of a U.S. government "instrumentality." The Basel III capital rules recognize that the risk characteristics of GSE securities differ from those guaranteed by the U.S. government. The capital rules bear this out by assigning the former a twenty percent risk weight and the latter a zero percent risk weight.[38] Therefore, the proposed rule would eliminate the reference to obligations of U.S. "instrumentalities" in 12 CFR 347.209(d)(2), and would create a separate category expressly for GSE securities. Creating a separate category for GSE securities is necessary because such securities would be subject to a haircut under the proposed rule to account for their twenty percent risk weight under the Basel III capital rules, whereas securities guaranteed by the U.S. government would not be subject to a haircut given their zero percent risk weight.

Under the proposed rule, a foreign bank would be permitted to pledge the assets listed below, provided that such assets are denominated in United States dollars, and satisfy both the investment grade and highly liquid standards. Further, such assets would be discounted at the rates set forth in the haircut table.

The proposed pledgeable asset categories include:

(1) Cash;

(2) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

(3) Obligations of U.S. GSEs;

(4) Negotiable CDs that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(6) Commercial paper;

(7) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(8) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(9) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; and

(10) Any other asset determined by the FDIC to be acceptable.[39]

Cash, treasury bills or other direct obligations of or fully guaranteed by the United States or any agency thereof, and the obligations of the stated international development banks will categorically satisfy the investment grade and highly liquid standards discussed above.[40] Therefore, foreign banks that pledge these assets will not be required to perform individual analyses to verify that the assets meet the investment grade and highly liquid standards. Pledgeable assets that receive a zero percent risk weight will generally not require a fair value haircut.

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[32] 12 CFR 347.209(e) provides that a foreign bank shall not pledge any assets unless a pledge agreement in a form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository.

[33] FDIC-supervised institutions may use the risk-mitigating effects of financial collateral, subject to a market price volatility haircut, in determining the exposure amount of such transactions for risk-weighting purposes. *See* 79 FR 20760 (April 14, 2014).

[34] In 12 CFR 324.37(c)(3), the FDIC established requirements for applying standardized haircuts for market price volatility which are scheduled on Table 1 to § 324.37—Standard Supervisory Market Price Volatility Haircuts (Table 1). A portion of Table 1 concerning haircuts for non-sovereign issuers serves as the basis for the reference table included in the proposed rule.

[35] *See* 12 CFR 324.32 for general risk weights.

[36] Assets with zero percent risk weight include cash; Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof; and obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development.

[37] 12 CFR part 252 subpart O.

[38] 12 CFR 324.32(a) and (c).

[39] The FDIC also reserves the right to require the substitution of pledged assets with other assets deemed more acceptable to the FDIC, as currently provided in 12 CFR 347.209(d).

[40] A direct debt obligation issued by a U.S. government-sponsored enterprise or an asset-backed security guaranteed by a U.S. GSE will categorically satisfy the investment grade standard only if the GSE is operating with capital support or another form of direct financial assistance from the U.S. government. All GSEs will categorically satisfy the liquidity standard.

Foreign banks pledging assets that do not categorically satisfy the investment grade and highly liquid standards, will need to demonstrate that the assets being pledged meet the investment grade and highly liquid standards. Foreign banks can find the appropriate haircut by identifying the risk weight associated with the asset in the capital rules. Although requiring foreign banks to verify that pledged assets satisfy these standards may require some adjustment of existing processes, the FDIC believes that it will impose minimal additional burden. The FDIC believes that conducting credit analysis on these instruments will ensure they satisfy the investment grade standard necessary for pledging. In addition, market data (*e.g.*, price quotes, bid/ask spreads, trade activity levels, or other price discovery information) are accessible through an insured branch's normal data source channels used in pre-purchase and ongoing investment due diligence. These resources and others should be available to confirm whether the assets pledged meet the highly liquid asset standard.

For purposes of carrying out the section 939A review related to subpart B, the FDIC surveyed the insured U.S. branches of foreign banks to examine the composition of assets pledged. At the time of the review, treasury bills, bank notes, and CDs were the primary instruments pledged. Consequently, the haircut provision could impact foreign banks that pledge bank notes or CDs because they may need to pledge additional collateral under the proposed rule compared with the pledge requirements under the existing rule. The FDIC views the proposed amendments to the pledgeable asset criteria as resulting in minimal impact on the insured U.S. branches of foreign banks.

Other Technical Revisions

The proposed rule would also add a definition of "agency" to the definitions section of subpart B, 12 CFR 347.202, which already contains a definition of "branch" under the existing regulation, in order to clarify that negotiable CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank located only in the United States would be eligible for pledging. The definition is not currently in existing subpart B. The term agency is used in 12 CFR 347.209(d)(1), (d)(4), and (d)(7) to describe the types of bank CDs, banker's acceptances, and notes issued by a branch or agency of a foreign bank that are eligible for pledging by a U.S. branch of a foreign bank. The proposed rule would use the definition of "agency" found in section 1(b)(1) of the IBA, which defines "agency" to mean "any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States".[41] This definition makes clear that only negotiable CDs, banker's acceptances, or notes issued by an agency of a foreign bank located in the United States are eligible pledged assets. The FDIC does not allow for the pledging of these instruments unless they are issued by an agency of a foreign bank located in the United States. It is also consistent with the definition of "branch" in subpart B, which means any office or place of business of a foreign bank located in any state of the United States.[42] The proposed rule would also amend 12 CFR 347.209(d)(7) to remove the reference to "United States" in the description of branches or agencies of foreign banks because those terms as defined in existing subpart B, and as proposed, necessarily mean an office or place of business of a foreign bank located in the United States. Furthermore, the proposed rule would amend 12 CFR 347.209(d)(7) to clarify that, consistent with requirements associated with pledging CDs and banker's acceptances in (d)(1) and (d)(4), a pledging U.S. branch of a foreign bank may not pledge a note issued by a branch or agency of a foreign bank that has the same country of domicile as the pledging bank. This requirement avoids potential same-country risks represented by the branches and agencies as direct extensions of foreign banks.

The FDIC proposes to amend the list of eligible collateral to eliminate the obsolete exception for non-negotiable CDs that were "pledged as collateral to the FDIC on March 18, 2005, until maturity according to the original terms of the existing deposit agreement." In 2005, when the FDIC amended its international banking regulations in part 347, it adopted 12 CFR 347.209(d)(1)(i) requiring only negotiable CDs.[43] The FDIC surveyed the composition of assets pledged by insured branches in 2005 before finalizing the regulations and found that only one branch had pledged a non-negotiable CD. In addition, the maturity date for any non-negotiable CD that was grandfathered under this provision has passed. Consequently, the provision by its terms is obsolete and no longer serves a useful purpose.

B. Request for Comment

The FDIC seeks comment on all aspects of this proposal, and specifically whether:

- The proposed investment grade and liquidity standards and haircut requirements for pledged assets under subpart B of part 347 are reasonable provisions.
- The removal of references to external credit ratings required under section 939A should be implemented as proposed or whether there are alternatives that would achieve a creditworthiness standard that is sufficiently risk sensitive.
- Pledged assets should be subject to the highly liquid standard as proposed and whether the criteria for highly liquid assets provide reasonable standards of assurance, or whether other criteria should be considered in addition to, or in lieu of, the criteria proposed.
- Pledged assets be discounted as proposed, or whether the full fair values of assets pledged under the existing risk-based assessment schedule already provide sufficient protection to the DIF.
- Pledged assets should be discounted using the table of risk weights and remaining maturities as proposed, or whether pledged assets should be discounted by each foreign bank based on an internal assessment of any credit risk and market price volatility for each asset pledged.
- Another method of discounting would advance the objective of ensuring that pledged assets be as free from risk and as liquid as possible.
- The types of assets that may be pledged should be expanded to include cash and obligations of U.S. GSEs as proposed and whether these asset types constitute appropriate additions to the assets that currently may be pledged.
- There are any other asset types that should be considered for inclusion as a pledgeable asset.
- The proposed provisions would have a material economic impact on foreign banking organizations subject to part 347.
- Imposing the highly liquid standard and haircut requirement would cause undue regulatory burden.

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[41] 12 U.S.C. 3101(1). The proposed definition is also consistent with the definition of agency in the Federal Reserve's and OCC's international banking regulations. *See* 12 CFR 211.21(b) (Federal Reserve) and 12 CFR 28.11(g) (OCC).

[42] 12 CFR 347.202(b).

[43] 70 FR 17550 (April 6, 2005).

V. Expected Effects

A. Subpart A

The applicability of the proposed revision to subpart A of part 347 would be limited to state nonmember banks that operate branches in foreign countries. As of March 31, 2016, there were nine state nonmember banks operating 16 foreign branches in seven countries. The majority of the state nonmember banks with foreign branches consist of larger multi-billion dollar financial institutions with commensurate systems and capabilities, while two of the foreign branches operated by the smaller state nonmember banks are limited-service facilities. The revision to subpart A would therefore apply to a small number of generally larger nonmember banks with more sophisticated operations, and the effect of the revision to the definition of "investment grade" would impose minimal additional burden. Note that prior to the enactment of the Dodd-Frank Act and implementation of section 939A, state nonmember banks were expected to have a credit risk management framework for securities and investments that included robust pre-purchase analysis and ongoing monitoring by the banking organization. The proposed revision in subpart A will shift the focus away from reliance on credit ratings and onto this in-depth analysis and monitoring. The revision to the definition of "investment grade" in part 347 would encourage regular, in-depth analysis by the banking organization of credit risks of securities, which is a prudent practice already expected of banks. This would likely result in little or no additional costs associated with credit risk analysis over those currently expended. However, potential credit losses will likely decline as covered institutions are more diligent in assessing their credit risk exposure, which would provide a benefit.

B. Subpart B

The revisions to subpart B of part 347 would apply only to the insured U.S. branches of foreign banks. As of March 31, 2016, there were ten insured branches of foreign banks. The FDIC would expect the revisions to subpart B to have the effect of ensuring that collateral pledged by these institutions is very low risk and as liquid as possible in order to provide protection to the DIF. The FDIC expects that these revisions would do so while imposing minimal additional burden and with little or no alteration of the composition or types of assets that insured branches of foreign banks currently pledge, or have pledged in the recent past, under the current provisions of subpart B.

VI. Alternatives Considered

Section 939A requires that agencies adopt standards of creditworthiness that, to the extent feasible, are uniform. The adoption of an alternative definition of "investment grade" would be inconsistent with section 939A's directive to adopt uniform standards.

In addition to adopting the definition of "investment grade," the proposal would amend subpart B of part 347 to impose liquidity and discounting requirements for assets pledged by insured branches of foreign banks operating in the United States. Alternatives to the proposed definition of "highly liquid" would contradict the definition of highly liquid assets as adopted in other Dodd-Frank Act rulemakings, thereby creating different treatment of the same securities. Similarly, the calculation of fair value discounts for pledged assets is based on the risk weights assigned to such assets in the capital rules. The FDIC welcomes and requests public comment on all aspects of the proposed rule, including the presentation of alternatives that would advance the FDIC's objective of ensuring that assets pledged under subpart B of part 347 be free from risk and as liquid as possible in order to provide protection to the DIF.

VII. Regulatory Analyses

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 ("PRA")[44] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget ("OMB") control number. The collection of information associated with subpart A is entitled *Foreign Branching and Investment by Insured State Nonmember Banks* (OMB No. 3064–0125). This information collection consists of applications related to establishing and closing a foreign branch; applications related to acquiring stock of a foreign organization; and records and reports which a nonmember bank must maintain once it has established a foreign branch or foreign organization. As described above, the proposed rule's revision to subpart A consists of a change to the definition of "investment grade" and imposes no additional reporting burden on insured state nonmember banks. Therefore, the FDIC expects that the PRA burden estimates of this collection will not be affected by this proposed rule. Accordingly, the FDIC will not be submitting any information collection request to OMB relating to the information collection associated with subpart A (OMB 3064–0125).

The collection of information associated with subpart B is entitled *Foreign Banks* (OMB No. 3064–0114). This information collection consists of, among other things, internal recordkeeping by insured branches of foreign banks, and reporting requirements related to an insured branch's pledge of assets to the FDIC. Under the proposed rule, all assets pledged to the FDIC under subpart B must be investment grade, highly liquid, and subject to a fair value discount. Several types of assets pledged by banks under subpart B would be categorically investment grade and highly liquid, and subject to a zero percent discount under the proposed rule. Insured branches of foreign banks would be able to continue to pledge these assets without any adjustment to their reporting and recordkeeping requirements. To the extent that an insured branch of a foreign bank pledges an asset that would not be categorically investment grade, highly liquid, or that would not receive a zero percent discount, the FDIC would expect minimal additional burden to accompany such a pledge of assets. Recordkeeping associated with the diligence that would be required for determining that an asset is highly liquid and investment grade is already expected of these institutions as part of their pre-purchase and ongoing investment due diligence. Similarly, the calculation of the applicable fair value discount is based on the risk weight of the applicable asset under the Basel III capital rules, which is an analysis that should already be undertaken by these institutions. Therefore, the FDIC expects that any resulting changes in burden would be so minimal that they would not alter the existing PRA burden estimates of this collection. Notwithstanding the fact that the FDIC does not expect a change in burden, the proposed rule may alter to some extent the nature of the recordkeeping and reporting requirements associated with subpart B. Accordingly, the FDIC will be submitting an information collection request to OMB relating to the information collection associated with subpart B (OMB 3064–0114). The existing burden estimates for the information collection associated with subpart B are as follows:

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[44] 44 U.S.C. 3501 *et seq.*

Title	Times/year	Respondents per year	Hours per response	Total burden hours
Moving a branch	1	1	8	8
Consent to operate	1	1	8	8
Conduct activities	1	1	8	8
Recordkeeping	1	10	120	1,200
Pledge of assets				
Documents	4	10	0.25	10
Reports	4	10	2	80
Total Burden				1,314

The FDIC welcomes comment on its existing information collections. Specifically, comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and
- Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. A copy of the comments may also be submitted to the OMB desk officer for the FDIC by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, by facsimile to 202–395–5806, or by email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act ("RFA") generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $550 million). A regulatory flexibility analysis, however, is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register** together with the proposed rule. For the reasons provided below, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

The proposed rule makes revisions to the existing rules in subpart A of part 347 consistent with section 939A of the Dodd-Frank Act.[45] The rules in subpart A of part 347 address issues related to the international activities and investments of insured state nonmember banks. In general, they implement the FDIC's statutory authority under section 18(d)(2) of the FDI Act regarding branches of insured state nonmember banks in foreign countries, and section 18(*l*) of the FDI Act regarding insured state nonmember bank investments in foreign entities. As of June 30, 2015, there were nine state nonmember banks that report having foreign branches. There are 16 foreign branches between these nine institutions. Available information indicates that state nonmember banks with foreign investments or foreign branches are not small entities.

The proposed rule also would amend subpart B of part 347 as applied to insured U.S. branches of foreign banks. As of March 31, 2016, there were ten insured branches of foreign banks, only one of which qualifies as a small entity. Therefore, the revisions to subpart B of part 347 would not have a significant impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites comment on how to make this proposed rule easier to understand.

For example:

- Has the FDIC organized the material to inform your needs? If not, how could the FDIC present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the agencies incorporate to make the regulation easier to understand?

List of Subjects in 12 CFR Part 347

Bank deposit insurance, Banks, banking, Foreign banking, Insured foreign branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend part 347 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 347

■ 1. The authority citation for part 347 is revised to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub. L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

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[45] Subpart J of part 303 contains the procedural rules that implement part 347. No revisions are proposed to these rules.

■ 2. In § 347.102, revise paragraph (o) to read as follows:

§ 347.102 Definitions.

* * * * *

(o) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

■ 3. In § 347.202, paragraphs (p) through (y) are redesignated as paragraphs (s) through (bb), paragraphs (k) through (o) are redesignated as paragraphs (m) through (q), paragraphs (b) through (j) are redesignated as paragraphs (c) through (k); and new paragraphs (b), (l), and (r) are added to read as follows:

§ 347.202 Definitions.

* * * * *

(b) Agency means any office or any place of business of a foreign bank located in any State of the United States at which credit balances are maintained incidental to or arising out of the exercise of banking powers, checks are paid, or money is lent but at which deposits may not be accepted from citizens or residents of the United States.

* * * * *

(l) Highly liquid means, with respect to a security, that the security has low credit and market risk; is traded in an active secondary two-way market that has committed market makers and independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined within one day and settled at that price within a reasonable time period conforming with trade custom; is a type of asset that investors historically have purchased in periods of financial market distress during which market liquidity has been impaired.

* * * * *

(r) Investment grade means a security issued by an entity that has adequate capacity to meet financial commitments for the projected life of the exposure. Such an entity has adequate capacity to meet financial commitments if the risk of its default is low and the full and timely repayment of principal and interest is expected.

* * * * *

■ 4. In § 347.209, revise paragraph (d) to read as follows:

§ 347.209 Pledge of assets.

* * * * *

(d) *Assets that may be pledged.* This paragraph sets forth the kinds of assets that may be pledged to satisfy the requirements of this section. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designee at such time as any such asset is placed with the depository. The FDIC reserves the right to require the substitution of pledged assets with other assets deemed acceptable to the FDIC.

(1) A foreign bank may pledge the kinds of assets set forth in this subparagraph, provided that: Such assets are denominated in United States dollars; such assets are investment grade, as that term is defined in § 327.202(q); and such assets are highly liquid, as that term is defined in § 347.202(k). Furthermore, for the purposes of calculating the amount of assets required to be pledged under paragraph (b) of this section, the assets that are eligible for pledging under paragraph (d)(2) of this section must be discounted at the rates set forth in Table 1 to § 347.209.

(i) Cash

(ii) Treasury bills, interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency thereof;

(iii) Obligations of United States government-sponsored enterprises;

(iv) Negotiable certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(v) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(vi) Commercial paper;

(vii) Notes issued by bank and savings and loan holding companies, banks, or savings associations organized under the laws of the United States or any state thereof or notes issued by branches or agencies of foreign banks, provided that the notes are payable in the United States, and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(viii) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, state or federal savings association, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(ix) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States;

(x) Any other asset determined by the FDIC to be acceptable.

* * * * *

■ 5. Amend § 347.209, by adding Table 1 to read as follows:

§ 347.209 Pledge of assets.

* * * * *

TABLE 1 TO § 347.209—SUPERVISORY HAIRCUTS FOR ASSETS PLEDGED UNDER § 347.209(d)

Remaining Maturity	Haircut % Assigned Based on Maturity and Risk Weight			
	Risk Weight (%) by Issuer as specified in Part 324.32			
	0%	20%	50%	100%
<= to 1 Year	0	1.0	2.0	4.0
> 1 Year but <= 5 Years	0	4.0	6.0	8.0
> 5 years	0	8.0	12.0	16.0

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of June, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15096 Filed 6–27–16; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0831; Directorate Identifier 2014–NM–061–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Airbus Model A318 and A319 series airplanes, A320–211, –212, –214, –231, –232, and –233 airplanes, and A321 series airplanes. The NPRM proposed to require an inspection to identify the part number and serial number of the main landing gear (MLG) sliding tubes installed on the airplane; and inspection of affected chromium plates for damage; an inspection of affected sliding tube axles for damage; and replacement of the sliding tube if necessary. The NPRM was prompted by a report of a rupture of a MLG sliding tube axle. This action revises the NPRM by removing certain service information that does not adequately address the identified unsafe condition and revising the compliance method. We are proposing this supplemental NPRM (SNPRM) to detect and correct cracks in the axle and (partial) detachment of the axle and wheel from the sliding tube, which could result in failure of an MLG. Since these actions impose an additional burden over those proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this SNPRM by August 12, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this SNPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0831; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2015–0831; Directorate Identifier 2014–NM–061–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318 and A319 series airplanes, A320–211, –212, –214, –231, –232, and –233 airplanes, and A321 series airplanes. The NPRM published in the **Federal Register** on April 24, 2015 (80 FR 22939) ("the NPRM"). The NPRM was prompted by a report of a rupture of a MLG sliding tube axle. The NPRM proposed to require an inspection to identify the part number and serial number of the MLG sliding tubes installed on the airplane; and an inspection of the axle on certain MLG sliding tubes for damage, and replacement of the sliding tube if necessary.

Actions Since Previous NPRM Was Issued

Since we issued the NPRM, we have determined that Messier-Bugatti-Dowty Service Bulletin 200–32–313, dated February 25, 2013, including Appendices A, B, and C, dated February 25, 2013; and Service Bulletin 201–32–62, including Appendices A, B, and C, dated February 25, 2013; do not adequately address the identified unsafe condition because this service information does not include all Required for Compliance steps required in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014. Therefore, this SNPRM proposes revising the service information specified for accomplishing the proposed actions.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0058, dated March 11, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A318 and A319 series airplanes, A320–211, –212, –214, –231, –232, and –233 airplanes, and A321 series airplanes. The MCAI states:

> A main landing gear (MLG) sliding tube axle rupture occurred in service. Investigation of the affected part showed that

> this failure was due to an abnormal grinding operation during overhaul by a certain maintenance and repair organization located in Singapore. A population of MLG sliding tubes was subsequently identified whose axles may have been subject to this grinding operation, which may have resulted in areas of residual stress on the axles on the MLG sliding tubes. In addition, the MSN [manufacturer serial number] of the aeroplanes which are known to have had the affected parts installed have been identified.
>
> This condition, if not detected and corrected, could lead to cracks in the axle and (partial) detachment of axle and wheel from the sliding tube, possibly resulting in failure of a MLG with consequent damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, Messier-Bugatti-Dowty, the MLG gear manufacturer, issued Service Bulletin (SB) 200–32–313 and SB 201–32–62 [both dated February 25, 2013], providing inspection instructions and criteria for removal from service of the affected MLG sliding tubes.
>
> For the reasons described above, this [EASA] AD requires a one-time Special Detailed Inspection (SDI) of the axle on the affected MLG sliding tubes and, depending on findings, replacement of the MLG sliding tube.

The SDI includes a detailed visual inspection of the chromium plate for damage, and a Barkhausen noise inspection of the sliding tube axles for damage.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0831.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–32–1416, dated March 10, 2014, including Appendix 01, dated March 10, 2014. This service information describes procedures for inspecting MLG axles and brake flanges by doing a detailed visual inspection of the chromium plates for damage, and a Barkhausen noise inspection of the sliding tube axles for damage, and replacement of affected parts if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Comments

We gave the public the opportunity to participate in developing this proposed AD. We considered the comments received.

Request To Revise Parts Installation Limitation

American Airlines requested that we revise paragraphs (l)(1) and (l)(2) of the proposed AD (in the NPRM) to allow installation of serviceable MLG sliding tubes that have passed the inspection required by paragraph (i) of the proposed AD (in the NPRM). American Airlines stated that it believes that this is the intent of the MCAI.

We agree with the commenter's request and have revised paragraphs (l)(1) and (l)(2) of this proposed AD accordingly.

Additional Changes to This SNPRM

We have removed Messier-Bugatti-Dowty Service Bulletin 200–32–313, including Appendices A, B, and C, dated February 25, 2013; and Service Bulletin 201–32–62, including Appendices A, B, and C, dated February 25, 2013; as sources of service information in this SNPRM. We have specified Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014, as the appropriate source of service information for accomplishing the proposed actions.

FAA's Determination and Requirements of This SNPRM

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Certain changes described above expand the scope of the NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Differences Between This SNPRM and the MCAI or Service Information

The effectivity in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014, does not include Model A318 series airplanes. This SNPRM specifies using the procedures specified for Model A319 series airplanes in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014, for accomplishing the proposed actions on Model A318 series airplanes.

Costs of Compliance

We estimate that this SNPRM affects 3 airplanes of U.S. registry.

We also estimate that it would take about 18 work-hours per product to comply with the basic requirements of this SNPRM. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this SNPRM on U.S. operators to be $4,590, or $1,530 per product.

In addition, we estimate that any necessary on-condition actions would take about 3 work-hours, for a cost of $255 per product. We have received no definitive data that would enable us to provide part cost estimates for the on-condition actions specified in this SNPRM. We have no way of determining the number of aircraft that might need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2015–0831; Directorate Identifier 2014–NM–061–AD.

(a) Comments Due Date

We must receive comments by August 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by a report of a rupture of a main landing gear (MLG) sliding tube axle. We are issuing this AD to detect and correct cracks in the axle and (partial) detachment of the axle and wheel from the sliding tube, which could result in failure of an MLG.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) MLG Sliding Tube Part Number and Serial Number Identification

Within 3 months after the effective date of this AD: Do an inspection to identify the part number and serial number of the MLG sliding tubes installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the MLG sliding tubes can be conclusively determined from that review.

(h) Identification of Airplanes Not Affected by the Requirements of Paragraph (i) of This AD

An airplane with a manufacturer serial number (MSN) not listed in figure 1 to paragraph (h) of this AD is not affected by the requirements of paragraph (i) of this AD, provided it can be determined that no MLG sliding tube having a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD has been installed on that airplane since first flight of the airplane.

FIGURE 1 TO PARAGRAPH (h) OF THIS AD

Affected Airplanes Listed by MSN					
0179	0214	0296	0412	0558	0604
0607	0668	0704	0720	0726	0731
0754	0771	0799	0828	0841	0855
0909	0914	0925	0939	0986	1028
1030	1041	1070	1083	1093	1098
1108	1148	1294	1356	2713	2831

TABLE 1 TO PARAGRAPHS (h), (i), (k)(1), (k)(2), (l)(1), AND (l)(2) OF THIS AD—AFFECTED MLG SLIDING TUBES

Part No.	Serial No.
201160302	78B
201160302	1016B11
201160302	1144B
201371302	B4493
201371302	B4513
201371302	SS4359
201371302	B4530
201371302	B4517
201371302	B4568
201371302	B4498
201371302	4490B
201371302	B202–4598
201371302	B165–4623
201371302	B244–4766
201371302	B267–4794
201371302	B272–4813
201160302	1108B
201371304	B041–4871
201371304	B045–4869
201371304	B001–4781
201371304	B051–4892
201371304	B110–1952
201371304	B054–4891
201371304	B063–4921
201371304	B071–4911
201371304	B071–4917
201371304	B080–1933
201371304	B117–5010
201371304	B120–4989
201371304	B132–2023
201371304	B114–1956
201371304	B208–2009
201371304	B133–1947
201371304	B154–5037
201371304	B89 4952
201371304	B129–1964
201371304	B227–2010
201371304	B170–5031
201371304	B182–5047
201371304	B239–2053
201371304	B1401–2856
201371304	B1813–3142
201371304	B116–5004
201522353	B011–149
201522350	B014–25
201522350	B019–56
201522350	B019–57
201522350	B021–69
201522350	B022–60
201522353	B03–111
201522353	B03–110
201522353	B112–317
201522353	B174–351
201522353	B179–392
201383350	4377B
201383350	4393B
201383350	B1831
201383350	B1832
201383350	SS4355B
201383350	SS4400B

(i) Inspections

For each MLG sliding tube, identified as required by paragraph (g) of this AD, having a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD: Within 3 months after the effective date of this AD, inspect affected MLG axles and brake flanges by doing a detailed visual inspection of the chromium plates for damage, and a Barkhausen noise inspection of the sliding tube axles for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1416, including

Appendix 01, dated March 10, 2014. For Model A318 series airplanes, use the procedures specified for Model A319 series airplanes in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014.

(j) Corrective Action

If, during any inspection required by paragraph (i) of this AD, any damage is detected: Before further flight, replace the MLG sliding tube with a serviceable tube, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014. For Model A318 series airplanes, use the procedures specified for Model A319 series airplanes in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014.

(k) Definition of Serviceable Sliding Tube

For the purpose of this AD, a serviceable sliding tube is defined as a sliding tube that meets the criterion in either paragraph (k)(1) or (k)(2) of this AD.

(1) A sliding tube having a part number and serial number not listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD.

(2) A sliding tube having a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD that has passed the inspections required by paragraph (i) of this AD.

(l) Parts Installation Prohibitions

(1) For airplanes that have an MLG sliding tube installed that has a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD: After an airplane is returned to service following accomplishment of the actions required by paragraphs (g), (h), and (i) of this AD, no person may install on any airplane an MLG sliding tube having a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD unless that sliding tube has passed the inspection required by paragraph (i) of this AD.

(2) For airplanes that, as of the effective date of this AD, do not have an MLG sliding tube installed that has a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD: No person may install on any airplane an MLG sliding tube having a part number and serial number listed in table 1 to paragraphs (h), (i), (k)(1), (k)(2), (l)(1), and (l)(2) of this AD unless that sliding tube has passed the inspection required by paragraph (i) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(3) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the MLG remains extended throughout the flight.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0058, dated March 11, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0831-0003.*

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 16, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14969 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7418; Directorate Identifier 2015–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2A12 (CL–601 Variant), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. This proposed AD was prompted by a report that a potential chafing condition exists between the negative-G fuel feed drain line of the auxiliary power unit (APU) and its surrounding structure and components. This proposed AD would require, for certain airplanes, a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and corrective actions if necessary. For certain other airplanes, this proposed AD would require replacement of the APU negative-G fuel feed tube assembly and the drain line. We are proposing this AD to prevent a chafing condition in the negative-G fuel feed drain line, which can result in fuel leaking from the drain line. Leakage of the negative-G fuel feed drain line is a dormant failure. This condition, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.

DATES: We must receive comments on this proposed AD by August 12, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Norman Perenson, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7337; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7418; Directorate Identifier 2015–NM–163–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–26, dated September 14, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2A12 (CL–601 Variant) and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604 Variants) airplanes. The MCAI states:

> It was reported that a potential chaffing condition exist between the Auxiliary Power Unit (APU) negative-G fuel feed drain line and its surrounding structure and components. Leakage of the negative-G fuel feed drain line is a dormant failure, however, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.
>
> This [Canadian] AD mandates [for certain airplanes] the detailed visual inspection [for chafing conditions, *e.g.,* fouling between the drain line and other components and insufficient clearance] and, if required, rectification [corrective actions], to ensure required clearance between the APU negative-G fuel feed drain line and its surrounding structure and components [and, for certain other airplanes, this [Canadian] AD mandates replacement of the APU negative-G fuel feed tube assembly and the drain line].

Corrective actions include replacing the APU negative-G fuel feed drain line. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued the following service information:

- Service Bulletin 601–0640, dated May 19, 2015; and Service Bulletin 604–28–021 dated May 19, 2015. The service information describes procedures for a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and corrective actions.
- Service Bulletin 605–28–009, dated May 19, 2015. The service information describes procedures for a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, replacement of the APU negative-G fuel feed tube assembly and the drain line, and corrective actions.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 504 airplanes of U.S. registry.

We also estimate that it will take about 22 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $6,334 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $4,134,816 or $8,204 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2016–7418; Directorate Identifier 2015–NM–163–AD.

(a) Comments Due Date

We must receive comments by August 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–600–2A12 (CL–601 Variant) airplanes, having serial numbers (S/Ns) 3001 through 3066 inclusive.

(2) Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive.

(3) Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5301 through 5665 inclusive, and 5701 through 5970 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report that a potential chafing condition exists between the negative-G fuel feed drain line of the auxiliary power unit (APU) and its surrounding structure and components. We are issuing this AD to prevent a chafing condition in the negative-G fuel feed drain line, which can result in fuel leaking from the drain line. This condition, in combination with a nearby hot surface or other potential ignition source, could result in an uncontrolled fire in the aft equipment bay.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection and Corrective Action for Certain Airplanes

Within 24 months after the effective date of this AD, comply with the applicable actions specified in paragraphs (g)(1) through (g)(3) of this AD, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

(1) For Model CL–600–2A12 (CL–601 Variant) airplanes, having S/Ns 3001 through 3066 inclusive; and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601–0640, dated May 19, 2015.

(2) For Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5301 through 5665 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–28–021, dated May 19, 2015.

(3) For Model CL–600–2B16 (CL–604 Variant) airplanes, having S/Ns 5701 through 5913 inclusive, 5917, 5918, and 5923 through 5970 inclusive: Do a detailed inspection for chafing conditions of the negative-G fuel feed drain line of the APU, and do all applicable corrective actions, in accordance with the Accomplishment Instructions in Part A and, if applicable, Part B of Bombardier Service Bulletin 605–28–009, dated May 19, 2015.

(h) Modification for Certain Other Airplanes

For Model CL–600–2B16 (604 Variant) airplanes having S/Ns 5914 through 5916 inclusive and 5919 through 5922 inclusive: Within 24 months after the effective date of this AD, replace the APU negative–G fuel feed tube assembly and the drain line, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 605–28–009, dated May 19, 2015.

Note 1 to paragraph (h) of this AD: An inspection is not required.

(i) Service Information Exception

Where any service information identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD specifies to contact the manufacturer for corrective action, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Norman Perenson, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7337; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–26, dated September 14, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7418.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com*; Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 16, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14965 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7269; Directorate Identifier 2015–NM–198–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This proposed AD was prompted by a report indicating that during inspections to detect corrosion of the bulk cargo doors, several cracks were discovered. This proposed AD would require a general visual inspection of the bulk cargo door frame to identify any structural repairs, a detailed visual inspection of the frame at the repaired area for any cracking if necessary, and corrective actions if necessary. We are proposing this AD to detect and correct cracking of the bulk cargo doors; such cracking could result in rapid airplane decompression or possible loss of the bulk cargo door.

DATES: We must receive comments on this proposed AD by August 12, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7269; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7269; Directorate Identifier 2015–NM–198–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0238, dated December 18, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for Airbus Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. The MCAI states:

> During inspections to detect corrosion on the Bulk Cargo Doors of Airbus A300 family aeroplanes, several cracks were discovered. Investigations revealed that a set of SRM [structural repair manual] repair solutions was defined in 1993, and was classified as permanent and without limitation. As of 2011, this set of repair solutions was revised and classified permanent, but with post-repair required actions.
>
> This condition, if not detected and corrected, could result in rapid decompression events or even loss of the bulk cargo door.
>
> As per Ageing Aircraft rules, it was determined that new inspections have to be completed on the Bulk Cargo Door Frames to detect potential fatigue damages on repaired structures or to perform a new repair scheme.
>
> Based on the fact that several aeroplanes could potentially be flying with potential fatigue damages on repaired structures, Airbus was requested to issue Alert Operator Transmission (AOT) A53W010–15 to provide fleet-wide inspection instructions to address this condition.
>
> For the reasons describes above, this [EASA] AD requires a one-time inspection of the bulk cargo door frame to determine whether a repair has been accomplished and, depending on findings, accomplishment of applicable corrective action(s).

The required actions in this NPRM include a detailed visual inspection of the bulk cargo door frame at the repaired area for any cracking, repair of cracks, and post-repair inspections of crack-free frames. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7269.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Alert Operators Transmission A53W010–15, Revision 00, including Appendixes 1, 2, and 3, dated December 15, 2015. The service information describes a general visual inspection of the bulk cargo door frame to identify any structural repairs, and a detailed visual inspection of the frame at the repaired area. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 135 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$11,475

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD, except for the cost of reporting, specified as follows:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Reporting	1 work-hour × $85 per hour = $85	$0	$85

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this proposed AD is 2120–0056. The paperwork cost associated with this proposed AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2016–7269; Directorate Identifier 2015–NM–198–AD.

(a) Comments Due Date

We must receive comments by August 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, that have accumulated more than 14,600 total flight cycles as of the effective date of this AD.

Note 1 to paragraph (c) of this AD: For airplanes that have accumulated 14,600 total flight cycles or fewer as of the effective date of this AD, no actions are required by this AD.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by a report indicating that during inspections to detect corrosion of the bulk cargo doors, several cracks were discovered. We are issuing this AD to detect and correct cracking of the bulk cargo doors; such cracking could result in rapid airplane decompression or possible loss of the bulk cargo door.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

Within 250 flight cycles or 6 months after the effective date of this AD, whichever occurs first, do a general visual inspection of the bulk cargo door frame to identify the existence of any structural repairs, in accordance with the instructions of Airbus Alert Operators Transmission (AOT) A53W010–15, Revision 00, including Appendixes 1, 2, and 3, dated December 15, 2015.

(h) Detailed Visual Inspection

If, during the general visual inspection required in paragraph (g) of this AD, any repair is found on the bulk cargo door frame: Before further flight, do a detailed visual inspection for cracking of the frame at the repaired area, in accordance with the instructions of Airbus AOT A53W010–15, Revision 00, including Appendixes 1, 2, and 3, dated December 15, 2015.

(i) Crack Repair

If any cracking is found during the detailed visual inspection required by paragraph (h) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

(j) Post-Repair Actions for Crack-Free Frames

If no cracking is found during the detailed visual inspection required by paragraph (h) of this AD: Do the actions in paragraphs (j)(1) and (j)(2) of this AD.

(1) At the applicable time specified in paragraph (j)(1)(i) or (j)(1)(ii) of this AD: Send a report of the inspection results to Airbus Service Bulletin Reporting Online Application on Airbus World (*https://w3.airbus.com/*).

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 60 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 60 days after the effective date of this AD.

(2) Within 2,800 flight cycles after the detailed visual inspection required by paragraph (h) of this AD: Do applicable post-repair inspections and repairs, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA Design Organization Approval (DOA).

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–2125; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0238, dated December 18, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7269.

(2) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAW, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 10, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14968 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7270; Directorate Identifier 2015–NM–116–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–700 and –700C series airplanes. This proposed AD was prompted by a report that for airplanes with blended winglets, the nose-up pitch trim limit and associated warning for the horizontal stabilizer control system will allow take-off with incorrect trim settings. This proposed AD would require, depending on airplane configuration, replacing the pitch trim light plates on the flight deck control stand, relocating the position warning horn switches of the horizontal stabilizer, revising the software, removing the placard, and doing related investigative and corrective actions if necessary. We are proposing this AD to prevent take-off with incorrect settings of the horizontal stabilizer pitch trim system. Settings outside of the appropriate pitch trim limits could result in loss of controllability of the airplane during take-off.

DATES: We must receive comments on this proposed AD by August 12, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Aviation Partners Boeing service information identified in this NPRM, contact Aviation Partners Boeing, 2811 South 102nd Street, Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–3355; email: *leng@aviationpartners.com;* Internet: *http://www.aviationpartnersboeing.com.*

For The Boeing Company service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*.

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. Boeing Alert Service Bulletin 737–27A1306, dated September 10, 2015, is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7270.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7270; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7270; Directorate Identifier 2015–NM–116–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received a report that for airplanes with blended winglets, the nose-up pitch trim limit and associated warning for the horizontal stabilizer control system will allow takeoff with incorrect trim settings. The trim control system was recently analyzed for potential nose-up mis-trim occurrences during take-off for airplanes with blended winglets. Results of the analysis indicated that Model 737–700 airplanes with blended winglets are not compliant with the certification rules for specific conditions. This condition, if not corrected, could result in the loss of controllability of the airplane during take-off.

Related Service Information Under 1 CFR Part 51

We reviewed Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 2, dated March 1, 2016, and Boeing Alert Service Bulletin 737–27A1306, dated September 10, 2015. The service information describes procedures for replacing the pitch trim light plates on the flight deck control stand, relocating the position warning horn switches of the horizontal stabilizer, revising the software, and doing related investigative and corrective actions.

The related investigative actions include verifying that the stabilizer "B" measurement is at a certain dimension, performing a light plate function test, performing a stabilizer functional test, loading and verifying model/engine database software, performing a flight management computer configuration check, and verifying all settings.

The corrective actions include adjusting the stabilizer, adjusting the light plate, replacing the light plate, rigging and adjusting the horizontal stabilizer trim system, and repairing the light plate switch.

We reviewed Aviation Partners Service Bulletin AP737–34–005, dated July 17, 2015. The service information describes procedures for revising the software and removing the placard.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between this Proposed AD and the Service Information." For information on the procedures and compliance times, see Boeing Alert Service Bulletin 737–27A1306, dated September 10, 2015, at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7270.

Differences Between This Proposed AD and the Service Information

The service information specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD affects 569 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Relocation	Up to 4 work-hours × $85 per hour = $340	$0	Up to $340	Up to $193,460
Replacement	Up to 3 work-hours × $85 per hour = $255	$1,973	Up to $2,228	Up to $1,267,732
Software installation	2 work-hours × $85 per hour = $170	0	170	96,730

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Placard Removal (2 airplanes).	1 work-hour × $85 per hour = $85	0	85	170

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2016–7270; Directorate Identifier 2015–NM–116–AD.

(a) Comments Due Date

We must receive comments by August 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–700 and –700C series airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Airplanes having supplemental type certificate ST00830SE installed (Aviation Partners Boeing blended winglets), as identified in Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 2, dated March 1, 2016.

(2) Airplanes identified in Boeing Alert Service Bulletin 737–27A1306, dated September 10, 2015.

(3) Airplanes identified in Aviation Partners Service Bulletin AP737–34–005, dated July 17, 2015.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by a report that for airplanes with blended winglets, the nose-up pitch trim limit and associated warning for the horizontal stabilizer control system will allow take-off with incorrect trim settings. We are issuing this AD to prevent take-off with incorrect settings of the horizontal stabilizer pitch trim system. Settings outside of the appropriate pitch trim limits could result in loss of controllability of the airplane during take-off.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement, Relocation, and Applicable Related Investigative and Corrective Actions

(1) For airplanes identified in paragraph (c)(1) of this AD: Within 72 months after the effective date of this AD, relocate the position warning horn switches of the horizontal stabilizer, replace the pitch trim light plates on the flight deck control stand, revise the software, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 2, dated March 1, 2016; except as specified in paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight.

(2) For airplanes identified in paragraph (c)(2) of this AD: Within 72 months after the effective date of this AD, relocate the position warning horn switches of the horizontal stabilizer, replace the pitch trim light plates on the flight deck control stand, revise the software, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–27A1306, dated September 10, 2015, and Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 2, dated March 1, 2016; except as specified in paragraph (j) of this AD. Do all applicable related investigative and corrective actions before further flight.

(h) Software Revision and Placard Removal

For airplanes identified in paragraph (c)(3) of this AD: Within 72 months after the effective date of this AD, revise the software and remove the placard, in accordance with the Accomplishment Instructions of Aviation Partners Service Bulletin AP737–34–005, dated July 17, 2015.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

This paragraph provides credit for the actions specified in paragraphs (g)(1) and (g)(2) of this AD, if those actions were performed before the effective date of this AD using Aviation Partners Boeing Service Bulletin AP737–27–002, dated March 31, 2015; or Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 1, dated August 6, 2015.

(j) Exception to the Service Information

Where Aviation Partners Boeing Service Bulletin AP737–27–002, Revision 2, dated March 1, 2016, specifies to contact Boeing for appropriate action, and specifies that action as Required for Compliance (RC): Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) Except as required by paragraph (j) of this AD: For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

(2) For service information identified in this AD, contact Aviation Partners Boeing, 2811 South 102nd Street, Suite 200, Seattle, WA 98168; phone: 206–830–7699; fax: 206–767–3355; email: *leng@aviationpartners.com;* Internet: *http://www.aviationpartnersboeing.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 14, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14966 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7267; Directorate Identifier 2016–NM–015–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes, Model DHC–8–200 series airplanes, and Model DHC–8–300 series airplanes. This proposed AD was prompted by several occurrences of loss of airspeed data on both pilot and co-pilot air speed indicators due to the accumulation of ice on the pitot probes. An investigation revealed that the accumulation of ice was due to inoperative pitot probe heaters. This proposed AD would require replacing the existing circuit breakers in both the left and right side of the pitot heater system with circuit breakers that have higher trip points. We are proposing this AD to prevent circuit breakers from tripping and cutting power supply to the pitot probe heater, which could cause loss of airspeed data and result in the flightcrew not being able to control the airspeed of the airplane.

DATES: We must receive comments on this proposed AD by August 12, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7267; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–7267; Directorate Identifier 2016–NM–015–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2016–04, dated February 1, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model DHC–8–102, –103, and –106 airplanes, Model DHC–8–200 series airplanes, and Model DHC–8–300 series airplanes. The MCAI states:

> There have been several occurrences of loss of airspeed data on both pilot and co-pilot Airspeed Indicators (ASI) due to the accumulation of ice on the pitot probes. Subsequent investigation revealed that the build up of ice on the pitot probes was due to inoperative pitot probe heaters. When flying in heavy precipitations, the increased heat required by the pitot probe to clear ice build up may result in a current demand in excess of the trip point of the associated circuit breakers (CB). Under this condition, the CB may trip and cut power supply to the heater. If not corrected, the loss of airspeed data may result in the crew not being able to control the aeroplane's airspeed.
>
> This [Canadian] AD is issued to mandate the replacement of the existing CBs with CBs that have higher trip points.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7267.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 8–30–39, dated November 11, 2015, and Bombardier Service Bulletin 8–30–40, dated November 11, 2015. The service information describes replacing the existing circuit breakers in both the left and right side of the pitot heater system with circuit breakers that have higher trip points. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 83 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement	20 work-hours × $85 per hour = $1,700	Up to $1,194	$2,894	$240,202

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2016–7267; Directorate Identifier 2016–NM–015–AD.

(a) Comments Due Date

We must receive comments by August 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and rain protection.

(e) Reason

This AD was prompted by several occurrences of loss of airspeed data on both pilot and co-pilot air speed indicators due to the accumulation of ice on the pitot probes. An investigation revealed that the accumulation of ice was due to inoperative pitot probe heaters. We are issuing this AD to prevent circuit breakers from tripping and cutting power supply to the pitot probe heater, which could cause loss of airspeed data and result in the flightcrew not being able to control the airspeed of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement

Except as provided by paragraph (h) of this AD, within 5,000 flight hours or 60 months after the effective date of this AD, whichever occurs first: Replace the existing circuit breakers in both the left and right side of the pitot heater system with circuit breakers that have higher trip points, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–30–39, dated November 11, 2015 (for the right side), and Bombardier Service Bulletin 8–30–40, dated November 11, 2015 (for the left side).

(h) Airplanes That Meet the Requirements of Paragraph (g) of This AD

For airplanes on which Bombardier ModSum IS8Q3000004 has been incorporated in production, no action is required by paragraph (g) of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the New York ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2016–04, dated February 1, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7267.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone: 416–375–4000; fax: 416–375–4539; email: *thd.qseries@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 13, 2016.

Dionne Palermo,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–14971 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6989; Airspace Docket No. 16–ACE–7]

Proposed Amendment of Class E Airspace; Tekamah, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at Tekamah Municipal Airport, Tekamah, NE. Controlled airspace is necessary to accommodate standard instrument approach procedures (SIAP) at Tekamah Municipal Airport for the safety and management of Instrument Flight Rules (IFR) operations at airport.

DATES: Comments must be received on or before August 12, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm. W12–140, Washington, DC 20590; telephone 1–800–647–5527 or 202–366–9826. You must identify FAA Docket No. FAA–2016–6989; Airspace Docket No. 16–ACE–7, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at Tekamah Municipal Airport, Tekamah, NE.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6989/Airspace Docket No. 16–ACE–7." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tekamah Municipal Airport, Tekamah, NE., with a segment extending from the 6.5-mile radius to 9.7 miles southeast of the airport. Airspace reconfiguration is necessary to accommodate the SIAPs at Tekamah Municipal Airport for compliance with FAA Joint Order 7400.2K, Procedures for Handling Airspace Matters. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE NE E5 Tekamah, NE [Amended]

Tekamah Municipal Airport, NE
(Lat. 41°45′49″ N., long. 96°10′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tekamah Municipal Airport, and within 4 miles each side of the 154° bearing from the airport extending from the 6.5-mile radius of the airport to 9.7 miles southeast of the airport.

Issued in Fort Worth, Texas, on June 20, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–15186 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–6986; Airspace Docket No. 16–ACE–6]

Proposed Revocation of Class E Airspace; Farmington, MO; and Amendment of Class E Airspace for the following Missouri Towns; Ava, MO; Cameron, MO; Chillicothe, MO; Farmington, MO; and Festus, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E surface area airspace at Farmington Regional Airport, Farmington, MO; and modify Class E airspace extending upward from 700

feet above the surface at Bill Martin Memorial Airport, Ava, MO; Cameron Memorial Airport, Cameron, MO; Chillicothe Municipal Airport, Chillicothe, MO; Farmington Regional Airport, Farmington, MO; and Festus Memorial Airport, Festus, MO. Decommissioning of non-directional radio beacons (NDBs), cancellation of NDB approaches, and implementation of area navigation (RNAV) procedures have made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the above airports.

DATES: Comments must be received on or before August 12, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm. W12–140, Washington, DC 20590; telephone 1–800–647–5527 or 202–366–9826. You must identify FAA Docket No. FAA–2016–6986; Airspace Docket No. 16–ACE–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would remove Class E surface area airspace at Farmington Regional Airport, Farmington, MO; and modify Class E airspace extending upward from 700 feet above the surface at Bill Martin Memorial Airport, Ava, MO; Cameron Memorial Airport, Cameron, MO; Chillicothe Municipal Airport, Chillicothe, MO; Farmington Regional Airport; and Festus Memorial Airport, Festus, MO.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6986/Airspace Docket No. 16–ACE–6." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document proposes to amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by removing Class E surface area airspace at Farmington Regional Airport, Farmington, MO, as the airspace is no longer needed. This proposal also would modify Class E airspace extending upward from 700 feet above the surface at the following airports:

Within a 6.8-mile radius of Bill Martin Memorial Airport, Ava, MO, with a segment extending to from the 6.8-mile radius to the Dogwood VHF omnidirectional range collocated tactical air navigation (VORTAC) west/northwest of the airport;

Within a 6.4-mile radius of Cameron Municipal Airport, Cameron, MO;

Within a 6.4-mile radius of Chillicothe Municipal Airport, Chillicothe, MO;

Within a 6.4-mile radius of Farmington Regional Airport, Farmington, MO, with a segment extending from the 6.4-mile radius to 11.5 miles southwest of the airport, and a segment extending from the 6.4-mile radius to the Farmington VORTAC; and

Within a 6.9-mile radius of Festus Memorial Airport, Festus, MO, with a segment extending from the 6.9-mile radius to 8.8 miles south of the airport.

Airspace reconfiguration is necessary due to the decommissioning of NDBs including the Cameron NDB, Perrine NDB, and Festus NDB; cancellation of NDB approaches; and implementation of RNAV procedures at the above airports. Controlled airspace is necessary for the safety and management of the standard instrument approach procedures for IFR operations at the airports.

Class E airspace designations are published in paragraph 6002 and 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Farmington, MO [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE MO E5 Ava, MO [Amended]

Ava, Bill Martin Memorial Airport, MO
(Lat. 36°58′19″ N., long. 92°40′55″ W.)
Dogwood VORTAC
(Lat. 37°01′24″ N., long. 92°52′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Ava Bill Martin Memorial Airport, and within 1.8 miles each side of the 107° radial of the Dogwood VORTAC extending from the 6.8-mile radius to the VORTAC.

* * * * *

ACE MO E5 Cameron, MO [Amended]

Cameron Memorial Airport, MO
(Lat. 39°43′39″N., long. 94°16′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Cameron Memorial Airport.

* * * * *

ACE MO E5 Chillicothe, MO [Amended]

Chillicothe Municipal Airport, MO
(Lat. 39°46′55″ N., long. 93°29′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Chillicothe Municipal Airport.

* * * * *

ACE MO E5 Farmington, MO [Amended]

Farmington Regional Airport, MO
(Lat. 37°45′40″ N., long. 90°25′43″ W.)
Farmington VORTAC
(Lat. 37°40′24″ N., long. 90°14′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Farmington Regional Airport, and within 4 miles each side of the 204° bearing from the airport extending from the 6.4-mile radius to 11.5 miles southwest of the airport, and within 2 miles each side of the Farmington VORTAC 299° radial extending from the 6.4-mile radius of the airport to the VORTAC.

* * * * *

ACE MO E5 Festus, MO [Amended]

Festus Memorial Airport, MO
(Lat. 38°11′42″ N., long. 90°23′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Festus Memorial Airport, and within 2 miles each side of the 188° bearing from the airport extending from the 6.9-mile radius to 8.8 miles south of the airport.

Issued in Fort Worth, Texas, on June 20, 2016.

Walter Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2016–15185 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0448]

RIN 1625–AA00

Safety Zone, Fall River Grand Prix, Mt Hope Bay and Taunton River, Fall River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Mt Hope Bay and the Taunton River in the vicinity of Fall River, MA, during the Fall River Grand Prix marine event August 27–28, 2016. This safety zone is intended to safeguard mariners from the hazards associated with high-speed, high-performance motorboats competing in the event. Vessels would be prohibited from entering into, transiting through, mooring, or anchoring within this safety zone during periods of enforcement unless authorized by the Captain of the Port (COTP), Southeastern New England or the COTP's designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before July 28, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0448 using the *Federal e-Rulemaking Portal* at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, contact Mr. Edward G. LeBlanc, Chief of the Waterways Management Division at Coast Guard Sector Southeastern New England, telephone 401–435–2351, email *Edward.G.LeBlanc@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Acronyms

CFR	Code of Federal Regulations
COTP	Captain of The Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Borden Light Marina of Fall River, MA, notified the Coast guard that it intends to conduct the 2nd annual Fall River Grand Prix powerboat races in the vicinity of the Taunton River and Mt Hope Bay adjacent to the Fall River waterfront. Similar to the inaugural event in 2015, this is a two-day event where high-speed, high-performance motorboats participate in controlled races within a well-defined water area. The COTP Southeastern New England has determined that potential hazards associated with the Fall River Grand Prix require a safety zone in the vicinity of the Taunton River and Mt Hope Bay, in waters adjacent to Fall River, to provide for both participant and spectator safety.

The purpose of this rulemaking is to ensure the safety of vessels and spectators in the vicinity of the Fall River Grand Prix before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The 2nd Annual Fall River Grand Prix is a two-day event where high-speed, high-performance motorboats participate in controlled races within a well-defined water area. The safety zone proposed in this NPRM will encompass the racing area and will include a buffer between the racing motorboats and spectator craft to provide a margin of safety. As these races are part of a national series of events, governed by a national racing and safety organization (the U.S. Offshore Powerboat Association), and operated by experienced high-speed motorboat crews and support teams, they are expected to generate local and regional media coverage, and attract spectators on a number of recreational and excursion vessels.

The Coast Guard is establishing this safety zone, in conjunction with the Fall River Grand Prix, to ensure the protection of the maritime public and event participants from the hazards associated with high-speed, high-performance motorboat racing. The Coast Guard anticipates little concern with the proposed safety zone by mariners, as there is little major commercial vessel activity in Mt Hope Bay and the Taunton River in the vicinity of Fall River, MA, and most recreational vessels are not restricted to the deep draft channel and can easily transit via alternate routes. Also, the safety zone will be enforced only during periods of actual racing, which will be limited to only a few hours on each of the two days of the event.

Regardless, in the unlikely situation where a commercial or recreational vessel may still need to transit Mt Hope Bay and the Taunton River in the vicinity of Fall River, MA, for any number of reasons including destination, familiarity with the waterway, tide restrictions, etc., these vessels may be able to continue transits through Mt Hope Bay and the Taunton River, even during enforcement of the safety zone, as there will be sufficient room for most recreational vessels and some commercial vessels to pass to the west of the safety zone. Also, the Coast Guard routinely works with the local marine pilot organization and shipping agents to coordinate vessel transits during marine events, and would continue to do so for the entire event to avoid major interruptions to shipping schedules.

The Coast Guard proposes to add a temporary safety zone that would encompass the navigation channel from approximately Mt Hope Bay buoy R10 southwest of Brayton Point channel, and would extend approximately two miles to the northeast up to and including Mt Hope Bay buoy C17 north of the I–195/Braga Bridge. The safety zone would be enforced only during times of actual vessel racing.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

We expect the adverse economic impact of this proposed rule to be minimal. Although this regulation may have some adverse impact on the public, the potential impact would be minimized for the following reasons: The safety zone will be in effect for only a few hours each day for two consecutive days, and vessels will only be restricted from the zone in Mt Hope Bay and the Taunton River in the vicinity of Fall River, MA during those limited periods when the races are actually ongoing; during periods when there is no actual racing (*e.g.*, racing vessels are transiting from the pier to the racing site; downtime between races, etc.) vessels may be allowed to transit through the safety zone; there is an alternate route available for recreational vessels to the west of the safety zone that does not add substantial transit time and is already routinely used by mariners; many vessels, especially recreational vessels, may transit in all portions of the affected waterway except for those areas covered by the proposed safety zone; and vessels may enter or pass through the affected waterway with the permission of the COTP or the COTP's representative.

Notification of the Fall River Grand Prix and the associated safety zone would be made to mariners through the Rhode Island Port Safety Forum, local Notice to Mariners, event sponsors, and local media well in advance of the event.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of a temporary safety zone in conjunction with the Fall River Grand Prix event, a high-speed, high-performance motorboat racing event. Such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist is available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T0448 to read as follows:

§ 165.T0448 Safety Zone for the Fall River Grand Prix, Mt Hope Bay and Taunton River, Fall River, MA

(a) *Location.* The following area is a safety zone: Mt Hope Bay and the Taunton River navigation channel from approximately Mt Hope Bay buoy R10 southwest of Brayton Point channel, and extending approximately two miles to the northeast up to and including Mt Hope Bay buoy C17 north of the Braga

Bridge. The safety zone is encompassed by the following coordinates:

Corner	Latitude	Longitude
SW	41°41.40′ N.	7°11.15′ W.
NW	41°41.48′ N.	71°11.1′ W.
SE	41°42.33′ N.	71° 09.40′ W.
NE	41°42.42′ N.	71°09.47′ W.

(b) *Enforcement Period.* Vessels will be prohibited from entering this safety zone, when enforced, during the Fall River Grand Prix marine event between 9 a.m. and 5 p.m. from Saturday, August 27, 2016 to Sunday, August 28, 2016.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Southeastern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(3) Patrol Commander. The Coast Guard may patrol each safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign "PATCOM."

(4) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the safety zone established in conjunction with the Fall River Grand Prix, Taunton River, vicinity of Fall River, MA. These regulations may be enforced for the duration of the event.

(2) No later than 8 a.m. each day of the event, the Coast Guard will announce via Safety Marine Information Broadcasts and local media the times and duration of each race scheduled for that day, and the precise area(s) of the safety zone that will be enforced.

(3) Vessels may not transit through or within the safety zone during periods of enforcement without Patrol Commander approval. Vessels permitted to transit must operate at a no-wake speed, in a manner which will not endanger participants or other crafts in the event.

(4) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the safety zone unless authorized by an official patrol vessel.

(5) The Patrol Commander may control the movement of all vessels in the safety zone. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may delay or terminate the Fall River Grand Prix at any time to ensure safety. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

Dated: June 14, 2016.

Richard J. Shultz,

Captain, U.S. Coast Guard, Captain of the Port Southeastern New England.

[FR Doc. 2016–15331 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0250; FRL–9948–40–Region 4]

Air Plan Approval; GA Infrastructure Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the State of Georgia, through the Georgia Department of Natural Resources (DNR), Environmental Protection Division (GAEPD), on March 25, 2013, to demonstrate that the State meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour nitrogen dioxide (NO_2) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. GAEPD certified that the Georgia SIP contains provisions that ensure the 2010 1-hour NO_2 NAAQS is implemented, enforced, and maintained in Georgia. EPA is proposing to determine that portions of Georgia's infrastructure submission, submitted on March 25, 2013, addresses certain required infrastructure elements for the 2010 1-hour NO_2 NAAQS.

DATES: Written comments must be received on or before July 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2015–0250 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Richard Wong, *Air Regulatory Management Section,* Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Wong can be reached via telephone at (404) 562–8726 or via electronic mail at *wong.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On February 9, 2010, EPA promulgated a new 1-hour primary NAAQS for NO_2 at a level of 100 parts per billion, based on a 3-year average of the 98th percentile of the yearly distribution of 1-hour daily maximum concentrations. *See* 75 FR 6474. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2010 1-hour NO_2 NAAQS to EPA no later than January 22, 2013.[1]

Today's action is proposing to approve Georgia's infrastructure SIP submission for the applicable requirements of the 2010 1-hour NO_2 NAAQS, with the exception of the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) and the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4). On March 18, 2015, EPA approved Georgia's March 25, 2013, infrastructure SIP submission regarding the PSD permitting requirements for major sources of sections 110(a)(2)(C), prong 3 of D(i), and (J) for the 2010 1-hour NO_2 NAAQS. *See* 80 FR 14019. Therefore, EPA is not proposing any action pertaining to these requirements. EPA is not proposing any action today regarding the interstate transport requirements of section 110(a)(2)(D)(i)(I) and (II) (prongs 1, 2, and 4). For the aspects of Georgia's submittal proposed for approval today, EPA notes that the Agency is not approving any specific rule, but rather proposing that Georgia's already approved SIP meets certain CAA requirements.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2010 1-hour NO_2 NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for "infrastructure" SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below and in EPA's September 13, 2013, memorandum entitled "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)."[2]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)(2)(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[3]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[4]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting Fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from Georgia that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 1-hour NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as "infrastructure SIP" submissions. Although the term "infrastructure SIP" does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as "nonattainment SIP" or "attainment plan SIP" submissions to address the nonattainment planning requirements of part D of title I of the CAA, "regional haze SIP" submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review (NNSR) permit program submissions to address the permit requirements of CAA, title I, part D.

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[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. Additionally, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2). Throughout this rulemaking, unless otherwise indicated, the term "Georgia Rule" indicates that the cited regulation has been approved into Georgia's federally-approved SIP. The term "Georgia statute" indicates cited statutes in Georgia Air Quality Act, Official Code of Georgia Annotated (O.C.G.A.) Section 12–9, *et seq.*, which are not a part of the SIP unless otherwise indicated.

[2] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[3] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[4] As mentioned above, this element is not relevant to today's proposed rulemaking.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that "each" SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit "a plan" to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the "applicable requirements" of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

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[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] *See, e.g.,* "Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule," 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, *e.g.,* that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] *See, e.g.,* "Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting," 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and "Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS," (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's implementation plan appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and new source review (NSR) pollutants, including greenhouse gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 fine particulate matter ($PM_{2.5}$) NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's implementation plan meets basic structural requirements. For example, section 110(a)(2)(C) includes, among other things, the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor NSR program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission.

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[11] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] "Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)," Memorandum from Stephen D. Page, September 13, 2013.

[13] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[14] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of "implementation, maintenance, and enforcement" of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a "SIP call" whenever the Agency determines that a state's implementation plan is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. What is EPA's analysis of how Georgia addressed the elements of the sections 110(a)(1) and (2) "infrastructure" provisions?

Georgia's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Georgia's SIP are relevant to air quality control regulations. The following State regulations include enforceable emission limitations and other control measures: 391–3–1–.01, *Definitions. Amended.;* 391–3–1–.02, *Provisions. Amended.;* and 391–3–1–.3, *Permits. Amended.* These regulations collectively establish enforceable emissions limitations and other control measures, means or techniques for activities that contribute to NO_2 concentrations in the ambient air, and provide authority for GAEPD to establish such limits and measures as well as schedules for compliance through SIP-approved permits to meet the applicable requirements of the CAA. EPA has made the preliminary determination that the cited provisions are adequate to protect the 2010 1-hour NO_2 NAAQS in the State.

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during start up, shut down, and malfunction (SSM) operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown" (September 20, 1999), and the Agency is addressing such state regulations in a separate action.[18]

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109 (November 24, 1987)), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Georgia's authority to monitor ambient air quality is found in the Georgia Air Quality Act Article 1:

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[15] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See "Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions," 74 FR 21639 (April 18, 2011).

[16] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule," 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (January 26, 2011) (final disapproval of such provisions).

[18] On June 12, 2015, EPA published a final action entitled, "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction." *See* 80 FR 33840.

Air Quality, Powers and duties of director as to air quality generally (O.C.G.A. Section 12–9–6). Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network, includes the annual ambient monitoring network design plan, and includes a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[19] On June 15, 2015, EPA received Georgia's plan for 2015. On October 13, 2015, EPA approved Georgia's monitoring network plan. Georgia's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0152. The Georgia statute, along with Georgia's Ambient Air Monitoring Network Plan, provide for the establishment and operation of ambient air quality monitors, the compilation and analysis of ambient air quality data, and the submission of these data to EPA upon request. No specific statutory or regulatory authority is necessary for GAEPD to authorize data analysis or to submit such data to EPA, and that data submissions are provided in response to Federal regulations. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the ambient air quality monitoring and data system requirements related to the 2010 1-hour NO_2 NAAQS.

3. 110(a)(2)(C) *Program for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* Section 110(a)(2)(C) consists of three sub-elements; enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources; and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for the subject NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

Enforcement: GAEPD's Enforcement Program covers mobile and stationary sources, consumer products, and fuels. The enforcement requirements are met through two Georgia Rules for Air Quality: 391–3–1–.07, *Inspections and Investigations. Amended.* and 391–3–1–.09 *Enforcement. Amended.* Georgia also cites to enforcement authority found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–13) in its submittal. Collectively, these regulations and State statute provide for enforcement of NO_2 emission limits and control measures.

Preconstruction PSD Permitting for Major Sources: With respect to Georgia's March 25, 2013, infrastructure SIP submission related to the PSD permitting requirements for major sources of section 110(a)(2)(C), EPA took final action to approve these provisions for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

Regulation of minor sources and modifications: Section 110(a)(2)(C) also requires the SIP to include provisions that govern the minor source program that regulates emissions of the 2010 1-hour NO_2 NAAQS. Georgia's federally approved SIP contains its minor NSR permitting program at Georgia Rule 391–3–1–.03(1), *Construction (SIP)Permit,* which governs the preconstruction permitting of modifications, construction of minor stationary sources, and minor modifications of major stationary sources.

EPA has made the preliminary determination that Georgia's SIP and practices are adequate for program enforcement of control measures and regulation of minor sources and modifications related to the 2010 1-hour NO_2 NAAQS.

4. 110(a)(2)(D)(i) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components; 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components have two subparts resulting in four distinct components, commonly referred to as "prongs," that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state ("prong 1"), and interfering with maintenance of the NAAQS in another state ("prong 2"). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state ("prong 3"), or to protect visibility in another state ("prong 4").

110(a)(2)(D)(i)(I)—*prongs 1 and 2:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2) because Georgia's 2010 1-hour NO_2 NAAQS infrastructure submissions did not address prongs 1 and 2.

110(a)(2)(D)(i)(II)—*prong 3:* With respect to Georgia's infrastructure SIP submission related to the interstate transport requirements for PSD of section 110(a)(2)(D)(i)(II) (prong 3), EPA took final action to approve Georgia's March 25, 2013, infrastructure SIP submission regarding prong 3 of D(i) for the 2010 1-hour NO_2 NAAQS on March 18, 2015. *See* 80 FR 14019.

110(a)(2)(D)(i)(II)—*prong 4:* EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to visibility protection in other states of section 110(a)(2)(D)(i)(II) (prong 4) and will consider these requirements in relation to Georgia's 2010 1-hour NO_2 NAAQS infrastructure submissions in a separate rulemaking.

5. 110(a)(2)(D)(ii) *Interstate Pollution Abatement and International Air Pollution:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. The following two Georgia Rules for Air Quality provide Georgia the authority to conduct certain actions in support of this infrastructure element related to PSD and permitting regulations. Specifically, Georgia Rules for Air Quality 391–3–1–.02. *Provisions. Amended* and 391–3–1–.03. *Permits. Amended* collectively require any new major source or major modification to undergo PSD or NNSR permitting and thereby provide notification to other potentially affected Federal, state, and local government agencies.

Additionally, Georgia does not have any pending obligation under section 115 and 126 of the CAA. EPA has made the preliminary determination that Georgia's SIP and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2010 1-hour NO_2 NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or

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[19] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Georgia's SIP as meeting the requirements of sections 110(a)(2)(E). EPA's rationale for today's proposals respecting each section of 110(a)(2)(E) is described in turn below.

In support of EPA's proposal to approve sub-elements 110(a)(2)(E)(i) and (iii), GAEPD's infrastructure SIP demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards and general policies, a system of permits, fee schedules for the review of plans, and other planning needs. In its SIP submittal, Georgia describes its authority for Section 110(a)(2)(E)(i) as the CAA section l05 grant process, the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10), and Georgia Rule for Air Quality 391–3–1–.03(9) which establishes Georgia's Air Permit Fee System. For Section 110(a)(2)(E)(iii), the State does not rely on localities in Georgia for specific SIP implementation. As evidence of the adequacy of GAEPD's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Georgia on April 19, 2016, outlining CAA section 105 grant commitments and the current status of these commitments for fiscal year 2015. The letter EPA submitted to GAEPD can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2015–0520. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2015, therefore, GAEPD's grants were finalized and closed out. EPA has made the preliminary determination that Georgia has adequate resources for implementation of the 2010 1-hour NO_2 NAAQS.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP provide: (1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. With respect to the requirements of section 110(a)(2)(E)(ii) pertaining the state board requirements of CAA section 128, Georgia's infrastructure SIP submission cites Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5) *Powers and duties of Board of Natural Resources as to air quality generally*) which provides the powers and duties of the Board of Natural Resources as to air quality and provides that at least a majority of members of this board represent the public interest and not derive any significant portion of income from persons subject to permits or enforcement orders and that potential conflicts of interest will be adequately disclosed. This provision has been incorporated into the federally approved SIP.

EPA has made the preliminary determination that the State has adequately addressed the requirements of section 128(a), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Therefore, EPA is proposing to approve GAEPD's infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary source monitoring system:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. GAEPD's infrastructure submission identifies how the major source and minor source emission inventory programs collect emission data throughout the State and ensure the quality of such data. These data are used to compare against current emission limits and to meet requirements of EPA's Air Emissions Reporting Rule (AERR). The following State rules enable Georgia to meet the requirements of this element: Georgia Rule for Air Quality 391–3–1–.02(3), *Sampling;* 391–3–1–.02(6)(b), *Source Monitoring;* 391–3–1–.02(7), *Prevention of Significant Deterioration of Air Quality;* 391–3–1–.02(8), *New Source Performance Standards;* 391–3–1–.02(9), *Emission Standards for Hazardous Air Pollutants;* 391–3–1–.02(11), *Compliance Assurance Monitoring;* and 391–3–1–.03, *Permits. Amended.* Also, the Georgia Air Quality Act Article I: Air Quality (O.C.G.A. 12–9–5(b)(6)) provides the State with the authority to conduct actions regarding stationary source emissions monitoring and reporting in support of this infrastructure element. These rules collectively require emissions monitoring and reporting for activities that contribute to NO_2 concentrations in the air, including requirements for the installation, calibration, maintenance, and operation of equipment for continuously monitoring or recording emissions, or provide authority for GAEPD to establish such emissions monitoring and reporting requirements through SIP-approved permits and require reporting of NO_2 emissions.

Georgia Rule for Air Quality 391–3–1–.02(3), "Sampling," [20] specifically, in "Procedures for Testing and Monitoring Sources of Air Pollutants" under *Compliance with Standards and Maintenance Requirements* allows the use of all available information to determine compliance,[21] and EPA is unaware of any provision preventing the use of credible evidence in the Georgia SIP.

Additionally, Georgia is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. Georgia made its latest update to the 2011 NEI on December 12, 2014. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Georgia's SIP and practices are adequate for the stationary source monitoring systems related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(F).

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[20] Georgia Rule for Air Quality 391–3–1–.02(3) *Sampling* is not approved into Georgia's federally-approved SIP.

[21] "*Credible Evidence,*" makes allowances for owners and/or operators to utilize "any credible evidence or information relevant" to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification, and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard.

8. 110(a)(2)(G) *Emergency Powers:* Section 110(a)(2)(G) of the Act requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority. Georgia's infrastructure SIP submission cites air pollution emergency episodes and preplanned abatement strategies in the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. Sections 12–9–2 *Declaration of public policy,* 12–9–6 *Powers and duties of director as to air quality generally,* 12–9–12 *Injunctive relief,* 12–9–13 *Proceedings for enforcement,* and 12–9–14 *Powers of director in situations involving imminent and substantial danger to public health*), and Rule 391–3–1–.04 "Air Pollution Episodes." O.C.G.A. Section 12–9–2 provides "[i]t is declared to be the public policy of the state of Georgia to preserve, protect, and improve air quality . . . to attain and maintain ambient air quality standards so as to safeguard the public health, safety, and welfare." O.C.G.A. Section 12–9–6(b)(10) provides the Director of EPD authority to "issue orders as may be necessary to enforce compliance with [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)] and all rules and regulations of this article." O.C.G.A. Section 12–9–12 provides that "[w]henever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under [the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A)], he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with this article. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy of law." O.C.G.A. Section 12–19–13 specifically pertains to enforcement proceedings when the Director of EPD has reason to believe that a violation of any provision of the Georgia Air Quality Act Article 1: Air Quality (O.C.G.A), or environmental rules, regulations or orders have occurred. O.C.G.A. Section 12–9–14 also provides that the Governor, may issue orders as necessary to protect the health of persons who are, or may be, affected by a pollution source or facility after "consult[ation] with local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking."

Rule 391–3–1–.04 "Air Pollution Episodes" provides that the Director of EPD "will proclaim that an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency exists when the meteorological conditions are such that an air stagnation condition is in existence and/or the accumulation of air contaminants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons in the specific area affected." Collectively the cited provisions provide that Georgia EPD demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority in the state. EPA has made the preliminary determination that Georgia's SIP, and State laws are adequate for emergency powers related to the 2010 1-hour SO_2 NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *Future SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan (i) as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements. GAEPD is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in Georgia. The State has the ability and authority to respond to calls for SIP revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS. Georgia has no areas that have been designated as nonattainment for the 2010 1-hour NO_2 NAAQS. *See* 77 FR 9532 (February 17, 2012).

The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(12) provide Georgia the authority to conduct certain actions in support of this infrastructure element. Section 12–9–6(b)(12) of the Georgia Air Quality Act requires GAEPD to submit SIP revisions whenever revised air quality standards are promulgated by EPA. EPA has made the preliminary determination that Georgia adequately demonstrates a commitment to provide future SIP revisions related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* EPA is proposing to approve Georgia's infrastructure SIP submission for the 2010 1-hour NO_2 NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection. With respect to Georgia's infrastructure SIP submission related to the preconstruction PSD permitting requirements of section 110(a)(2)(J), EPA took final action to approve Georgia's March 25, 2013, 2010 1-hour NO_2 NAAQS infrastructure SIP for these requirements on March 18, 2015. *See* 80 FR 14019. EPA's rationale for its proposed action regarding applicable consultation requirements of section 121, the public notification requirements of section 127, and visibility protection requirements is described below.

Consultation with government officials (121 consultation): Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations, and Federal Land Managers carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. The following State rules and statutes, as well as the State's Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding Federal Land Managers), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities: Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–5(b)(17)); Georgia Administrative Procedures Act

(O.C.G.A. § 50–13–4); and Georgia Rule 391–3–1–.02(7) as it relates to Class I areas. Section 12–9–5(b)(17) of the Georgia Air Quality Act states that the DNR Board is to "establish satisfactory processes of consultation and cooperation with local governments or other designated organizations of elected officials or federal agencies for the purpose of planning, implementing, and determining requirements under this article to the extent required by the federal act."

Additionally, Georgia adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development.[22] Required partners covered by Georgia's consultation procedures include Federal, state and local transportation and air quality agency officials. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with government officials related to the 2010 1-hour SO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) consultation with government officials.

Public notification (127 public notification): GAEPD has public notice mechanisms in place to notify the public of instances or areas exceeding the NAAQS along with associated health effects through the Air Quality Index reporting system in required areas. GAEPD's Ambient Monitoring Web page (*www.georgiaair.org/amp*) provides information regarding current and historical air quality across the State. Daily air quality forecasts may be disseminated to the public in Atlanta through the Georgia Department of Transportation's electronic billboards. In its SIP submission, Georgia also notes that the non-profit organization in Georgia, "Clean Air Campaign," disseminates statewide air quality information and ways to reduce air pollution. Georgia rule 391–3–1–.04, *Air Pollution Episodes* enables the State to conduct certain actions in support of this infrastructure element. In addition, the following State statutes provide Georgia the authority to conduct certain actions in support of this infrastructure element. OCGA 12–9–6(b)(8) provides authority to the Georgia Board of Natural Resources "To collect and disseminate information and to provide for public notification in matters relating to air quality. . .". EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide public notification related to the 2010 1-hour NO_2 NAAQS when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(J) public notification.

Visibility protection: EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals to fulfill its obligations under section 110(a)(2)(J). As such, EPA has made the preliminary determination that it does not need to address the visibility protection element of section 110(a)(2)(J) related to Georgia's infrastructure SIP submission related to the 2010 1-hour NO_2 NAAQS.

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to the EPA can be made. The Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. Section 12–9–6(b)(2)) provides GAEPD the authority to conduct modeling actions and to submit air quality modeling data to EPA in support of this element. GAEPD maintains personnel with training and experience to conduct source-oriented dispersion modeling with models such as AERMOD that would likely be used for modeling NO_2 emissions from sources. The State also notes that its SIP-approved PSD program, which includes specific (dispersion) modeling provisions, provides further support of GAEPD's ability to address this element. All such modeling is conducted in accordance with the provisions of 40 CFR part 51, Appendix W, "Guideline on Air Quality Models."

Additionally, Georgia participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2010 1-hour SO_2 NAAQS, for the Southeastern states. Taken as a whole, Georgia's air quality regulations and practices demonstrate that GAEPD has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 1-hour NO_2 NAAQS. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2010 1-hour NO_2 NAAQS. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* Section 110(a)(2)(L) requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover (i) the reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Georgia's PSD and NNSR permitting programs are funded with title V fees. Georgia Rule 391–3–1–.03(9), *Permit Fees* incorporates the EPA-approved title V fee program and fees for synthetic minor sources. Georgia's authority to mandate funding for processing PSD and NNSR permits is found in Georgia Air Quality Act Article 1: Air Quality (O.C.G.A. 12–9–10). Additionally, Georgia's approved title V operating permit program at 391–3–1–.03(10), *Title V Operating Permits,*[23] covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued. EPA has made the preliminary determination that Georgia's SIP and practices adequately provide for permitting fees related to the 2010 NO_2 NAAQS, when necessary. Accordingly, EPA is proposing to approve Georgia's infrastructure SIP submission with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation/participation by affected local entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and

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[22] Georgia rule 391–3–1–.15, *Georgia Transportation Conformity and Consultation Interagency Rule,* is approved into the State's SIP. *See* 77 FR 35866.

[23] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

participation in SIP development by local political subdivisions affected by the SIP. Consultation and participation by affected local entities is authorized by the Georgia Air Quality Act: Article 1: Air Quality (O.C.G.A. 12–9–5(b)(17)) and the Georgia Rule for Air Quality 391–3–1–.15, *Transportation Conformity,* which defines the consultation procedures for areas subject to transportation conformity. Furthermore, GAEPD has demonstrated consultation with, and participation by, affected local entities through its work with local political subdivisions during the developing of its Transportation Conformity SIP and has worked with the Federal Land Managers as a requirement of the regional haze rule. EPA has made the preliminary determination that Georgia's SIP and practices adequately demonstrate consultation with affected local entities related to the 2010 1-hour NO$_2$ NAAQS when necessary.

V. Proposed Action

With the exception of the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (110(a)(2)D(i) and 110(a)(2)(J), and the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states and visibility of prongs 1, 2, and 4 of section 110(a)(2)(D)(i), EPA is proposing to approve that Georgia's March 25, 2013, SIP submission for the 2010 1-hour NO$_2$ NAAQS has met the above-described infrastructure SIP requirements because these aspects of the submission are consistent with section 110 of the CAA. This proposed action, however, does not include the preconstruction PSD permitting requirements for major sources of section 110(a)(2)(C), prong 3 of (D)(i), and (J), which have been approved in a separate action, or the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of prongs 1, 2 and 4 of section 110(a)(2)(D)(i), which will be addressed by EPA in a separate action.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–15136 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2016–0294; FRL–9948–41–Region 4]

Air Plan Approval; Alabama; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the October 26, 2015, State Implementation Plan (SIP) submittal from Alabama concerning the Cross-State Air Pollution Rule (CSAPR). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO$_X$) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO$_2$). This action would approve into Alabama's SIP the state's regulations requiring Alabama EGUs to participate in new CSAPR state trading programs for annual NO$_X$ and SO$_2$ emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. These CSAPR state trading programs are substantively identical to the CSAPR federal trading programs except with regard to the provisions allocating emission allowances among Alabama units. EPA is proposing to approve the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate Alabama units' obligations to participate in CSAPR's federal trading programs for annual NO$_X$ and SO$_2$ emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 and 2006 Fine Particulate Matter (PM$_{2.5}$) national ambient air quality standards (NAAQS). Approval of these portions of the SIP

revision would satisfy Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state. EPA is not proposing to act at this time on the portion of Alabama's SIP submittal intended to replace Alabama units' obligations to participate in CSAPR's federal trading program for ozone-season NO_X emissions under a separate CSAPR FIP.

DATES: Comments must be received on or before July 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2016–0294 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Mr. Scofield can be reached by telephone at (404) 562–9034 or via electronic mail at *scofield.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

This section provides additional information by addressing the following:

I. Summary
II. Background on CSAPR and CSAPR-Related SIP Revisions
III. Conditions for Approval of CSAPR-Related SIP Revisions
IV. Alabama's SIP Submittal and EPA's Analysis
  A. Alabama's SIP Submittal
  B. EPA's Analysis of Alabama's Submittal
    1. Timeliness and Completeness of SIP Submittal
    2. Methodology Covering All Allowances Potentially Requiring Allocation
    3. Assurance That Total Allocations Will Not Exceed the State Budget
    4. Timely Submission of State-Determined Allocations to EPA
    5. No Changes to Allocations Already Submitted to EPA or Recorded
    6. No Other Substantive Changes to Federal Trading Program Provisions
    7. Complete, Substantively Identical Trading Program Provisions
    8. Only Non-Substantive Substitutions for the Term "State"
    9. Exclusion of Provisions Addressing Units in Indian Country
V. EPA's Proposed Action on Alabama's Submittal
VI. Statutory and Executive Order Reviews

I. Summary

EPA is proposing to approve the portions of the October 26, 2015, SIP submittal from Alabama concerning CSAPR[1] trading programs for annual emissions of NO_X and SO_2. Large EGUs in Alabama are subject to CSAPR FIPs that require the units to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program.[2] CSAPR also provides a process for the submission and approval of SIP revisions to replace the requirements of CSAPR FIPs with SIP requirements under which a state's units participate in CSAPR state trading programs that are integrated with and, with certain permissible exceptions, substantively identical to the CSAPR federal trading programs.

The portions of the SIP revision proposed for approval would incorporate into Alabama's SIP state trading program regulations for annual NO_X and SO_2 emissions that would replace EPA's federal trading program regulations for those emissions for Alabama units for control periods in 2017 and later years. EPA is proposing to approve these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions. Under the CSAPR regulations, approval of these portions of the SIP revision would automatically eliminate the obligations of units in Alabama (but not any units in Indian country within Alabama's borders) to participate in CSAPR's federal trading programs for annual NO_X and SO_2 emissions under the corresponding CSAPR FIPs. EPA proposes to find that approval of these portions of the SIP revision would satisfy Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state.

The Phase 2 SO_2 budget established for Alabama in the CSAPR rulemaking has been remanded to EPA for reconsideration.[3] If EPA finalizes approval of these portions of the SIP revision as proposed, Alabama will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those interstate transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate Alabama units' obligations to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program. Elimination of Alabama units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 2 allowances to Alabama units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Alabama's remanded federally-established Phase 2 SO_2 budget and eliminate EPA's authority to subject units in Alabama to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Alabama's federally-established Phase 2 SO_2 budget.[4]

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[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

[2] EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706 and 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

[3] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

[4] Although the court in *EME Homer City Generation* remanded Alabama's Phase 2 SO_2 budget because it determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its

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Large electricity generating units in Alabama are also subject to an additional CSAPR FIP requiring them to participate in the federal CSAPR NO_X Ozone Season Trading Program. While Alabama's SIP submittal also seeks to replace the requirements of the CSAPR FIP concerning Alabama units' ozone-season NO_X emissions, EPA is not proposing to act on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs would have no effect on the CSAPR NO_X Ozone Season Trading Program as applied to Alabama units, and the FIP requiring the units to participate in that program would remain in place.

Section II of this document summarizes relevant aspects of the CSAPR federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Alabama's SIP submittal, and Section V sets forth EPA's proposed action on the submittal. Section VI addresses required statutory and Executive Order reviews.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires 28 Eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three NAAQS: The 1997 ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO_2, annual NO_X, and/or ozone-season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four federal emissions trading programs: A program for annual NO_X emissions, a program for ozone-season NO_X emissions, and two geographically separate programs for annual SO_2 emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.[5] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading program for ozone-season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[6] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative—an "abbreviated" SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.[7] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a "full" SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[8] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.[9] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[10] Finally, if at the time a full SIP revision is approved

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SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3).

[5] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[6] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3); § 52.39(d), (g).

[7] § 52.38(a)(4), (b)(4); § 52.39(e), (h).

[8] § 52.38(a)(5), (b)(5); § 52.39(f), (i).

[9] § 52.38(a)(6), (b)(6); § 52.39(j).

[10] § 52.38(a)(5)(iv) and (v), (a)(6), (b)(5)(v) and (vi), (b)(6); § 52.39(f)(4) and (5), (i)(4) and (5), (j).

EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[11]

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.[12] However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. The remanded budgets include the CSAPR Phase 2 SO_2 emissions budget applicable to Alabama units under the federal CSAPR SO_2 Group 2 Trading Program.

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would amend the Phase 2 emissions budget applicable to Alabama units under the CSAPR NO_X Ozone Season Trading Program and would make technical corrections and nomenclature changes that would apply throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR federal trading program regulations for annual NO_X, ozone-season NO_X, and SO_2 emissions at 40 CFR part 97.[13]

III. Conditions for Approval of CSAPR-Related SIP Revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.[14] This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and federal trading program with a SIP and a substantively identical state trading program integrated with the federal trading program. The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

- *Methodology covering all allowances potentially requiring allocation.* For each federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the federal program's default allocations to existing units[15] at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.[16] In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.[17]
- *Assurance that total allocations will not exceed the state budget.* For each federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.[18] Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.
- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.[19] Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

Units	Year of the control period	Deadline for submission to EPA of allocations or auction results
Existing	2017 and 2018	June 1, 2016.
	2019 and 2020	June 1, 2017.
	2021 and 2022	June 1, 2018.
	2023 and later years	June 1 of the fourth year before the year of the control period.
Other	All years	July 1 of the year of the control period.

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the federal trading program regulations.[20]

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[11] § 52.38(a)(7), (b)(7); § 52.39(k).

[12] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

[13] 80 FR 75706, 75710, 75757 (December 3, 2015).

[14] 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

[15] In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA's default allocations to existing units is posted at *www.epa.gov/crossstaterule/techinfo.html.*

[16] § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

[17] *See* §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

[18] § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

[19] § 52.38(a)(4)(i)(B) and (C), (a)(5)(i)(B) and (C), (b)(4)(ii)(B) and (C), (b)(5)(ii)(B) and (C); § 52.39(e)(1)(ii) and (iii), (f)(1)(ii) and (iii), (h)(1)(ii) and (iii), (i)(1)(ii) and (iii).

- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.[21] Any new definitions adopted in the SIP revision (in addition to the federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.[22]

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NOx Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.[23]
- *No other substantive changes to federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.[24]

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.
- *Only non-substantive substitutions for the term "State."* The SIP revision may substitute the name of the state for the term "State" as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the trading program regulations.[25]
- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.[26]

IV. Alabama's SIP Submittal and EPA's Analysis

A. Alabama's SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 ozone NAAQS, the 1997 annual $PM_{2.5}$ NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS.[27] Alabama units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO_X Annual Trading Program, the CSAPR NO_X Ozone Season Trading Program, and the CSAPR SO_2 Group 2 Trading Program.[28]

On October 26, 2015, Alabama submitted to EPA a SIP revision including provisions that, if all portions were approved, would incorporate into Alabama's SIP CSAPR state trading program regulations that would replace the CSAPR federal trading program regulations with regard to Alabama units' SO_2, annual NO_X, and ozone-season NO_X emissions for control periods in 2017 and later years. The SIP submittal includes three sets of duly adopted state rules: ADEM Administrative Code rules 335–3–5–.06 through 335–3–5–.36, which establish Alabama's "TR SO_2 Group 2 Trading Program"; rules 335–3–8–.07 through 335–3–8–.38, which establish Alabama's "TR NO_X Annual Trading Program"; and rules 335–3–8–.39 through 335–3–8–.70, which establish Alabama's "TR NO_X Ozone Season Trading Program".[29] In general, each individual rule in Alabama's three sets of CSAPR state trading program rules is designed to replace one individual section (or in a few cases two or three sections) of the corresponding federal trading program regulations, and each set of rules is designed to collectively replace all sections of the corresponding federal trading program regulations. For example, Alabama rule 335–3–5–.06 is designed to replace 40 CFR 97.401 through 97.403, while Alabama rules 335–3–5–.06 through 335–3–5–.36 are designed to collectively replace all of subpart AAAAA of 40 CFR part 97 (*i.e.*, 40 CFR 97.401 through 97.435).

With regard to form, some of the individual rules for each Alabama CSAPR state trading program are set forth as full regulatory text—notably the rules addressing program applicability, emissions budgets and variability limits, and allowance allocations—but most of the rules incorporate the corresponding federal trading program section or sections by reference. Several of the Alabama rules adopt cross-references to other Alabama rules in place of cross-references to specific federal trading program sections that would be replaced by those other Alabama rules.

With regard to substance, the rules for each Alabama CSAPR state trading program differ from the corresponding CSAPR federal trading program regulations in three main ways. First, the applicability provisions in the Alabama rules require participation in Alabama's CSAPR state trading programs only for units in Alabama, not for units in any other state or in Indian country within the borders of Alabama or any other state. Second, the Alabama rules set forth a methodology for allocating emission allowances among Alabama units that differs from the default allowance allocation provisions in the federal trading program regulations. Finally, the Alabama rules omit a number of federal trading program provisions not applicable to Alabama's state trading programs, including provisions setting forth the amounts of emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states; provisions addressing EPA's procedures for allocating allowances from Indian country NUSAs; and provisions addressing EPA's recordation of certain allowance allocations.

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[20] § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

[21] § 52.38(a)(4), (a)(5), (b)(4), (b)(5); § 52.39(e), (f), (h), (i).

[22] § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

[23] § 52.38(b)(4)(i), (b)(5)(i).

[24] § 52.38(b)(4), (b)(5).

[25] §§ 52.38(a)(5)(iii), (b)(5)(iv); 52.39(f)(3), (i)(3).

[26] §§ 52.38(a)(5)(iv), (b)(5)(v); 52.39(f)(4), (i)(4).

[27] 76 FR 48208, 48213 (August 8, 2011).

[28] 40 CFR 52.38(a)(2), (b)(2); § 52.39(c); § 52.54(a), (b); § 52.55.

[29] Consistent with the current CSAPR regulatory text, Alabama's rules use the terms "Transport Rule" and "TR" instead of the updated terms "Cross-State Air Pollution Rule" and "CSAPR". For simplicity, EPA uses the updated terms here except where otherwise noted.

The Alabama SIP adopts the Phase 2 annual NO_X and SO_2 budgets found at 40 CFR 97.410(a)(1)(iv) and 97.710(a)(1)(iv), respectively. Although the court in *EME Homer City* remanded Alabama's Phase 2 SO_2 budget because it determined that EPA required more emissions reductions than necessary to address the downwind air quality problems to which Alabama contributes, Alabama is voluntarily adopting a Phase 2 SO_2 budget that is equivalent to the federally-developed budget remanded by the court. Nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3). Accordingly, EPA will evaluate the approvability of the Alabama SIP submission consistent with this budget.

The SIP revision was submitted to EPA by a letter from the Director of the Alabama Department of Environmental Management. The letter and its enclosures describe steps taken by Alabama to provide public notice prior to adoption of the state rules.

At this time, EPA is proposing to take action on the portions of Alabama's SIP submittal designed to replace the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program with regard to Alabama units. EPA is not proposing to take action at this time on the portion of the SIP submittal designed to replace the federal CSAPR NO_X Ozone Season Trading Program with regard to Alabama units. As noted in section II above, EPA has proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. The proposal would further reduce the ozone-season NO_X emissions budgets for control periods in 2017 and later years for a number of states, including Alabama.[30] Action on the portion of Alabama's SIP submittal related to ozone-season NO_X emissions would be premature while the proposed update is pending because there is a foreseeable potential conflict between the total amount of allowances that would be allocated to Alabama units under Alabama's state trading program, which reflects Alabama's current ozone-season NO_X budget, and the total amount of allowances that could permissibly be allocated to the units under a final updated budget.

EPA has previously approved a separate Alabama SIP revision replacing the default allowance allocation provisions of the CSAPR NO_X Annual Trading Program, the CSAPR NO_X Ozone Season Trading Program, and the CSAPR SO_2 Group 2 Trading Program for Alabama existing units for the control period in 2016.[31]

B. EPA's Analysis of Alabama's Submittal

As described in section IV.A above, at this time EPA is taking action on the portions of Alabama's SIP submittal designed to replace the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program for Alabama units but not the portion of the SIP submittal designed to replace the federal CSAPR NO_X Ozone Season Trading Program. The analysis discussed in this section addresses only the portions of Alabama's SIP submittal on which EPA is taking action at this time. For simplicity, throughout this section EPA refers to the portions of the submittal on which EPA is proposing to take action as "the submittal" or "the SIP revision" without repeating the qualification that at this time EPA is analyzing and proposing to act on only portions of the SIP submittal.

1. Timeliness and Completeness of SIP Submittal

Alabama's SIP revision seeks in part to replace the default allowance allocation provisions in the CSAPR federal trading program regulations for annual NO_X and SO_2 emissions as applied to Alabama units with state regulations establishing a different state-determined methodology, starting with the control periods in 2017. Under 40 CFR 52.38(a)(5)(i)(B) and 52.39(h)(1)(ii), the deadline for submission of state-determined allowance allocations for the 2017 and 2018 control periods is June 1, 2016, which under §§ 52.38(a)(5)(vi) and 52.39(i)(6) makes December 1, 2015, the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Alabama submitted its SIP revision to EPA on October 26, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Alabama's SIP revision was timely submitted and meets the applicable completeness criteria, it meets the conditions under 40 CFR 52.38(a)(5)(vi) and 52.39(i)(6) for timely submission of a complete SIP revision.

2. Methodology Covering All Allowances Potentially Requiring Allocation

Paragraphs 335–3–8–.14(1) and 335–3–5–.13(1) of the Alabama rules set forth total amounts of 71,962 CSAPR Annual NO_X allowances and 213,258 CSAPR SO_2 Group 2 allowances, respectively, that would be allocated to Alabama units for each control period in 2017 and later years according to the allocation procedures set forth under the remaining paragraphs of Alabama rules 335–3–8–.14 and 335–3–5–.13 (Paragraphs 335–3–8–.13(1) and 335–3–5–.12(1) set forth the same amounts as the respective state emissions budgets, in conjunction with the corresponding variability limits). These totals match the amounts of the respective Phase 2 emissions budgets for Alabama established under the federal trading program regulations for annual NO_X and SO_2 emissions, thereby addressing the full quantities of allowances that could be allocated to Alabama units under the default allocation provisions for the federal trading programs.[32] As noted earlier, although the Phase 2 SO_2 emissions budget was remanded because the court in *EME Homer City* determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3). Because the current CSAPR federal trading program regulations for annual NO_X and SO_2 emissions do not provide for portions of Alabama's overall emissions budgets to be allocated pursuant to the Indian country NUSA allocation procedures, there is no current need for the Alabama rules establishing CSAPR state trading programs for annual NO_X and SO_2 emissions to include provisions addressing the disposition of otherwise unallocated allowances from an Indian country NUSA that might be made available by EPA for state allocation.[33] The allocation provisions in the Alabama rules therefore enable Alabama's SIP revision to meet the condition under 40 CFR 52.38(a)(5)(i) and 52.39(i)(1) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

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[30] Alabama's current Phase 2 emissions budget under the CSAPR NO_X Ozone Season Trading Program is 31,499 tons. 40 CFR 97.510(a)(1)(iv). Alabama's proposed updated CSAPR emissions budget for ozone season NO_X emissions is 9,979 tons. 80 FR at 75770.

[31] 80 FR 52272 (September 22, 2015).

[32] 40 CFR 97.410(a)(1)(iv); § 97.710(a)(1)(iv).

[33] Since promulgating the current CSAPR regulations, EPA has learned of Indian country within Alabama's borders. If any units were to locate in that area of Indian country in the future, EPA would determine at that time what actions, if any, should be taken to make CSAPR NO_X Annual allowances and CSAPR SO_2 Group 2 allowances available for allocation to those units.

3. Assurance That Total Allocations Will Not Exceed the State Budget

As discussed in section IV.B.2 above, paragraphs 335–3–8–.14(1) and 335–3–5–.13(1) of the Alabama rules set forth the total amounts of CSAPR Annual NO_X allowances and CSAPR SO_2 Group 2 allowances to be allocated to Alabama units for each control period under the state trading programs; these total amounts equal the amounts of the respective annual NO_X and SO_2 emissions budgets established for Alabama units under the CSAPR federal trading program regulations; and under the current CSAPR federal trading program regulations for annual NO_X and SO_2 there is no possibility of additional allowances from an Indian country NUSA being allocated to Alabama units. EPA has not yet allocated or recorded CSAPR allowances for the control periods in 2017 or later years. The allocation methodology in Alabama's SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(i)(A) and 52.39(i)(1)(i) that, for each trading program, the total amount of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

4. Timely Submission of State-Determined Allocations to EPA

Paragraphs 335–3–8–.14(2)(a) through (d) and 335–3–5–.13(2)(a) through (d) of the Alabama rules provide for all allowance allocations to Alabama units established under the Alabama rules to be submitted to EPA by the following deadlines: allocations for the control periods in 2017 and 2018, by June 1, 2016; allocations for the control periods in 2019 and 2020, by June 1, 2017; allocations for the control periods in 2021 and 2022, by June 1, 2018; and allocations for later control periods, by June 1 of the fourth or fifth year before the year of the control period. These submission deadlines match or precede the submission deadlines discussed in section III above (specifically, the deadlines under 40 CFR 52.38(a)(5)(i)(B) and 52.39(i)(1)(ii) for allocations to units considered existing units for CSAPR purposes and the submission deadlines under §§ 52.38(a)(5)(i)(C) and 52.39(i)(1)(iii) for allocations to other units). Alabama's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(5)(i)(B) and (C) and 52.39(i)(1)(ii) and (iii) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No Changes to Allocations Already Submitted to EPA or Recorded

The Alabama rules include no provisions allowing alteration of allocations after the allocation amounts have been provided to EPA and no provisions allowing alteration of any allocations made and recorded by EPA under the federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(5)(i)(D) and 52.39(i)(1)(iv).

6. No Other Substantive Changes to Federal Trading Program Provisions

With the exception of the provisions addressing allowance allocations discussed above, the Alabama state trading program rules generally incorporate sections of the corresponding federal trading program regulations by reference or set forth full text that is very similar to the text in the corresponding federal trading program regulations.[34] Some of the differences between the Alabama rules and the corresponding federal trading program regulations are clearly non-substantive. For example, in instances where an Alabama rule contains full text substituting for the text of a section of the federal trading program regulations, the remaining Alabama rules adopt cross-references to the full-text Alabama rule in place of cross-references to the section of the federal trading program regulations that would be replaced by the full-text Alabama rule. The Alabama rules also contain definitions for certain terms used in the state trading programs' allocation provisions that are not used in the federal trading program regulations, as expressly permitted under the CSAPR regulations.[35] Most of the remaining differences between the Alabama rules and the corresponding sections of the federal trading program regulations consist of non-substantive renumbering of the provisions.[36]

In addition to the clearly non-substantive or expressly authorized differences summarized above, a few of Alabama's rules contain other differences from the federal trading program regulations. In each case, EPA has determined that the changes do not represent substantive changes to the federal trading program regulations. First, paragraphs 335–3–8–.08(1)(c), 335–3–8–.09(1)(a), 335–3–8–.34(2)(a), 335–3–5–.07(1)(c), 335–3–5–.08(1)(a), and 335–3–5–.32(2)(a) of the Alabama rules require Alabama units to submit certain petitions, statements, and notices not only to EPA but also to the Alabama Department of Environmental Management. Because the additional notification requirements do not alter the respective authorities or responsibilities of EPA and the Department, EPA considers the requirements to be non-substantive changes.

Second, paragraphs 335–3–8–.20(2)(a), 335–3–8–.23(2)(a), 335–3–5–.18(2)(a), and 335–3–5–.21(2)(a) of the Alabama rules provide that, like EPA, the Department will not adjudicate certain private legal disputes. Because the Department is not required to adjudicate such disputes under the federal trading program regulations in any event, these additions to the text of the state trading program rules merely clarify that the Department is not undertaking a new adjudication responsibility under the state trading programs. EPA therefore considers these additions to be non-substantive changes.

Third, paragraph 335–3–8–.07(2)(b)8. of the Alabama CSAPR state trading program rules for annual NO_X emissions substitutes a reference to Alabama rule 335–3–16–.01 (an Alabama air permit program rule) for a reference to 40 CFR 70.2 (the definitions section of the federal regulations governing state operating permit programs under CAA title V) in the corresponding CSAPR federal trading program definition of "permitting authority."[37] Although substitutions to definitions in the CSAPR federal trading program regulations generally are not permissible in a CSAPR-related SIP revision, in this case the substitution has no substantive effect, for two reasons. First, the state trading program rule, like the CSAPR federal trading program definition, includes a reference to the definition of "permitting authority" in 40 CFR 71.2 (the definitions section of the federal operating permit program under CAA title V) which encompasses the definition of "permitting authority" in § 70.2, so all the intended possible meanings of "permitting authority" are captured in the state trading program rules despite the loss of the reference to 40 CFR 70.2. Second, Alabama rule 335–3–16–.01 contains no definition of "permitting authority," so the substitution does not introduce any new, unintended meanings of "permitting authority" in the state trading program rules. EPA therefore considers the substitution to be a non-substantive change.

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[34] EPA has proposed to make certain technical corrections to the CSAPR FIP and federal trading program regulations in order to more accurately reflect EPA's intent as described in the CSAPR rulemaking and has also proposed to replace "TR" with "CSAPR" throughout the regulations (for example, "TR NO_X Annual unit" would become "CSAPR NO_X Annual unit"). *See* 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA's interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Alabama rules, EPA would interpret the Alabama rules as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR federal regulations would explicitly provide that terms that include "CSAPR" encompass otherwise identical terms in approved SIP revisions that include "TR".

[35] 40 CFR 52.38(a)(5)(ii); § 52.39(i)(2).

[36] Instances where Alabama's CSAPR state trading program rules omit provisions of the CSAPR federal trading program regulations are discussed in sections IV.B.7 and 9 below.

[37] Alabama's CSAPR state trading program rules for SO_2 emissions do not contain a comparable substitution provision.

Finally, paragraphs 335–3–8–.10(2)(a) and (b) and 335–3–5–.09(2)(a) and (b) of the Alabama rules substitute references to Alabama rule 335.3.16–.13(3) (the Alabama rule addressing minor permit modification procedures) for references to 40 CFR 70.7(e)(2) (the minor permit modification procedures section of the federal regulations governing state operating permit programs under CAA title V) in the federal trading program regulations regarding title V permit requirements. As applied to Alabama units only, the substituted Alabama rule provisions are substantively identical to the provisions in 40 CFR 70.7(e)(2) that would be replaced. Because in the context of Alabama's CSAPR state trading programs these particular provisions need to address only Alabama units and not units from other states participating in the CSAPR trading programs, EPA determines that these substitutions have no substantive effect.

For the reasons discussed above, EPA has determined that none of the textual additions or substitutions made to the CSAPR federal trading program regulations in Alabama's corresponding CSAPR state trading program rules are substantive, and that Alabama's SIP revision therefore meets the conditions under 40 CFR 52.38(a)(5) and 52.39(i) of making no substantive changes to the provisions of the federal trading program regulations beyond the provisions addressing allowance allocations.

7. Complete, Substantively Identical Trading Program Provisions

With the following exceptions, the Alabama rules comprising Alabama's CSAPR state trading program for annual NO_X emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.402 through 97.435, and the Alabama rules comprising Alabama's CSAPR state trading program for SO_2 emissions either incorporate by reference or adopt full-text replacements for all of the provisions of 40 CFR 97.702 through 97.735. The first exception is that Alabama rules 335–3–8–.13 and 335–3–5–.12, which generally address the amounts of emissions budgets and related quantities, omit the provisions of 40 CFR 97.410 and 97.710 setting forth the amounts of the Phase 1 emissions budgets, NUSAs, and variability limits for Alabama; the amounts of the Phase 2 NUSAs for Alabama; and the amounts of all emissions budgets, NUSAs, Indian country NUSAs, and variability limits for other states. Omission of the Alabama Phase 1 emissions budget and NUSA amounts is appropriate because Alabama's state trading programs do not apply to emissions occurring in Phase 1 of CSAPR. Omission of the default Alabama NUSA amounts under the federal trading program regulations is appropriate because the allocation procedures under Alabama's state trading programs establish NUSA amounts differently. Omission of the budget, NUSA, Indian country NUSA, and variability limit provisions for other states from state trading programs in which only Alabama units participate does not undermine the completeness of the state trading programs.

The second exception is that Alabama rules 335–3–8–.14 and 335–3–5–.13, generally addressing allowance allocations, omit 40 CFR 97.411(b)(2) and 97.412(b) and 97.711(b)(2) and 97.712(b), concerning EPA's administration of Indian country NUSAs. Omission of these provisions from Alabama's state trading program rules is required, as discussed in section IV.B.9 below.

The third exception is that Alabama rules 335–3–8–.24 and 335–3–5–.22, which generally incorporate by reference the federal trading programs' recordation schedule provisions, exclude from incorporation by reference 40 CFR 97.421(a), (b), (h), and (i) and 97.721(a), (b), (h), and (i), respectively, concerning EPA's schedule for recording certain allowance allocations. The federal trading program provisions at §§ 97.421(a) and (b) and 97.721(a) and (b), which address recordation of allocations to units considered existing units for CSAPR purposes of allowances for the compliance periods in 2015 and 2016, do not need to be included in Alabama's state trading program rules because those allocations have already been recorded. The federal trading program provisions at §§ 97.421(h) and 97.721(h), which address recordation of allocations from Indian country NUSAs, are appropriately excluded from state trading programs because a state may not administer an Indian country NUSA. The federal trading program provisions at §§ 97.421(i) and 97.721(i), which address recordation of second-round NUSA allocations, are not needed in Alabama's state trading program rules because Alabama would provide EPA the amounts of its NUSA allocations on the earlier schedule applicable to allocations to units considered existing units for CSAPR purposes.[38] Omission of these provisions from Alabama's state trading programs therefore does not undermine the completeness of the state trading programs.

Because none of the omissions undermines the completeness of the Alabama's state trading programs and because, as discussed in section IV.B.6 above, EPA has determined that Alabama's SIP revision makes no other substantive changes to the provisions of the federal trading program regulations beyond the provisions addressing allowance allocations, Alabama's SIP revision meets the condition under 40 CFR 52.38(a)(5) and 52.39(i) that the SIP revision must adopt complete state trading program regulations substantively identical to the complete federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except for permissible differences in allowance allocation and/or applicability provisions.

8. Only Non-Substantive Substitutions for the Term "State"

Paragraphs 335–3–8–.08(1)(a)1. and 335–3–5–.07(1)(a)1. of the Alabama rules substitute the term "the State of Alabama", and paragraphs 335–3–8–.08(1)(b) and 335–3–5–.07(1)(b) of the Alabama rules similarly substitute the term "the State" (meaning Alabama), for the phrase "a State (or Indian country within the borders of such State)" in the corresponding federal trading program regulations at 40 CFR 97.410(a)(1) and 97.710(a)(1) and at §§ 97.410(b) and

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[38] For the same reason, Alabama's state rules could permissibly omit 40 CFR 97.421(g) and 97.721(g), which address recordation of first-round NUSA allocations. Note that notwithstanding the lack of provisions addressing recordation of NUSA allocations in Alabama's state trading program rules, EPA would retain authority to complete the recordation of 2016 NUSA allocations to Alabama units because EPA has already started recording allocations to Alabama units of allowances for the compliance periods in 2016. *See* 40 CFR 52.38(a)(7); § 52.39(k).

97.710(b), respectively. These provisions of the Alabama rules define the units that are required to participate in Alabama's CSAPR state trading programs. The substitutions appropriately exclude units located in other states and units located in Indian country with the borders of Alabama or any other state, thereby limiting the applicability of Alabama's state trading programs to units that are subject to Alabama's jurisdiction. These substitutions do not substantively change the provisions of CSAPR's federal trading program regulations. The remaining Alabama rules do not substitute for the term "State" as used in the federal trading program regulations. Alabama's SIP revision therefore meets the condition under 40 CFR 52.38(a)(5)(iii) and 52.39(i)(3) that the SIP revision may substitute the name of the state for the term "State" as used in the federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively change the provisions of the federal trading program regulations.

9. Exclusion of Provisions Addressing Units in Indian Country

The Alabama rules do not set forth any full text provisions directly addressing units in Indian country within the state's borders. As discussed in section IV.B.8 above, paragraphs 335–3–8–.08(1)(a)1. and 335–3–5–.07(1)(a)1. of the Alabama rules define the units required to participate in Alabama's state trading programs in a manner that appropriately excludes units located in Indian country within Alabama's borders from coverage under Alabama's CSAPR state trading programs. Although various other provisions of the CSAPR federal trading program regulations incorporated by reference into the Alabama rules without modification refer to units in Indian country, the clear exclusion of any such units from coverage under the state trading program applicability provisions—in other words, the fact that such units are not "TR NO_X Annual units" or "TR SO_2 Group 2 units" for purposes of the state trading programs—renders the remaining provisions of Alabama's state trading program rules inoperative as to the units. EPA therefore interprets the Alabama rules as not imposing any requirements on units located in Indian country within the state's borders.

As discussed in section IV.B.7 above, Alabama rules 335–3–8–.14 and 335–3–5–.13, which address allowance allocations under the state trading programs, contain no provisions replacing 40 CFR 97.411(b)(2), 97.412(b), 97.711(b)(2), or 97.712(b), the portions of the corresponding federal trading program regulations governing allocations of allowances from Indian country NUSAs Thus, the Alabama rules do not include any express state rule provisions concerning administration of Indian country NUSAs. Further, Alabama rules 335–3–8–.24 and 335–3–5–.22, which generally incorporate by reference the federal trading programs' recordation schedule provisions, exclude 40 CFR 97.421(h) and 97.721(h), respectively, provisions addressing recordation of Indian country NUSA allocations. EPA notes that paragraphs 335–3–8–.14(3)(i) and 335–3–5–.13(3)(i) of the Alabama rules, which incorporate by reference the federal trading program regulations generally addressing corrections of incorrect allocations, fail to exclude 40 CFR 97.411(c)(5)(iii) and 97.711(c)(5)(iii), addressing corrections of certain incorrect Indian country NUSA allocations. However, the regulations governing approval of CSAPR-related SIP revisions do not expressly require exclusion of these federal trading program provisions (unlike the Indian country NUSA allocation provisions) and, further, the provisions are inoperative as to Alabama because the CSAPR federal trading program regulations do not currently establish Indian country NUSAs for Alabama.[39] EPA therefore interprets the Alabama state rules as sufficiently excluding provisions addressing administration of the Indian country NUSA provisions under the federal trading programs.

In summary, EPA has determined that Alabama's SIP revision adequately meets the condition under 40 CFR 52.38(a)(5)(iv) and 52.39(i)(4) of not including references to or imposing requirements on any unit in any Indian country within the state's borders and not including the federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.

V. EPA's Proposed Action on Alabama's Submittal

EPA is proposing to approve the portions of Alabama's October 26, 2015, SIP submittal concerning the establishment for Alabama units of CSAPR state trading programs for annual NO_X and SO_2 emissions for compliance periods in 2017 and later years. The proposed revision would adopt into the SIP the state trading program rules codified in ADEM Administrative Code rules 335–3–8–.07 through 335–3–8–.38 (establishing Alabama's "TR NO_X Annual Trading Program") and 335–3–5–.06 through 335–3–5–.36 (establishing Alabama's "TR SO_2 Group 2 Trading Program").[40] These Alabama CSAPR state trading programs would be integrated with the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program, respectively, and would be substantively identical to the federal trading programs except with regard to the allowance allocation provisions. Following approval of these portions of the proposed SIP revision, Alabama units therefore would generally be required to meet requirements under Alabama's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs, but allocations to Alabama units of CSAPR NO_X Annual allowances for compliance periods in 2017 and later years would be determined according to the SIP's allocation provisions at Alabama rule 335–3–8–.14 instead of EPA's default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a), and allocations to Alabama units of CSAPR SO_2 Group 2 allowances would be determined according to the SIP's allocation provisions at Alabama rule 335–3–5–.13 instead of EPA's default allocation provisions at 40 CFR 97.711(a), 97.711(b)(1), and 97.712(a). EPA is proposing to approve these portions of the SIP revision because they meet the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions, as discussed in section IV above.

EPA promulgated the FIPs requiring Alabama units to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program in order to address Alabama's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of Alabama's SIP submittal adopting CSAPR state trading program rules for annual NO_X and SO_2 substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) would correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[41] The proposed approval of the portions of Alabama's SIP submittal establishing CSAPR state trading program rules for annual NO_X and SO_2 emissions therefore would result in automatic termination of the obligations of Alabama units to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program. Approval of these portions of the SIP revision would therefore satisfy Alabama's obligation pursuant to CAA section 110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 $PM_{2.5}$ NAAQS in any other state.

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[39] Since promulgating the current CSAPR regulations, EPA has learned of Indian country within Alabama's borders. If any units were to locate in that area of Indian country in the future, EPA would determine at that time what actions, if any, should be taken to make CSAPR NO_X Annual allowances and CSAPR SO_2 Group 2 allowances available for allocation to those units.

[40] Consistent with the current CSAPR regulatory text, the Alabama rules use the terms "Transport Rule" and "TR" instead of the updated terms "Cross-State Air Pollution Rule" and "CSAPR".

As noted in section II above, the Phase 2 SO_2 budget established for Alabama in the CSAPR rulemaking has been remanded to EPA for reconsideration.[42] If EPA finalizes approval of these portions of the SIP revision as proposed, Alabama will have fulfilled its obligations to provide a SIP that address the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 $PM_{2.5}$ NAAQS. Thus, EPA would no longer be under an obligation to (nor would EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision would eliminate Alabama units' obligations to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 2 Trading Program. Elimination of Alabama units' obligations to participate in the federal trading programs would include elimination of the federally-established Phase 2 budgets capping allocations of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 2 allowances to Alabama units under those federal trading programs. As approval of these portions of the SIP revision would eliminate Alabama's remanded federally-established Phase 2 SO_2 budget and eliminate EPA's authority to subject units in Alabama to a FIP, it is EPA's opinion that finalization of approval of this SIP action would address the judicial remand of Alabama's federally-established Phase 2 SO_2 budget.[43] Large electricity generating units in Alabama are subject to an additional CSAPR FIP requiring them to participate in the federal CSAPR NO_X Ozone Season Trading Program. While Alabama's SIP submittal also seeks to replace the CSAPR FIP requirements addressing Alabama units' ozone-season NO_X emissions, EPA is not proposing to act on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs would have no effect on the CSAPR NO_X Ozone Season Trading Program as applied to Alabama units, and the FIP requiring the units to participate in that program would remain in place.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submittal that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submittals, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 10, 2016.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2016–15146 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

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[41] 40 CFR 52.38(a)(6); § 52.39(j); *see also* § 52.54(a)(1); § 52.55(a).

[42] *EME Homer City Generation, L.P.* v. *EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

[43] Although the court in *EME Homer City Generation* remanded Alabama's Phase 2 SO_2 budget because it determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0302; FRL–9948–14–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of a November 20, 2015, State Implementation Plan (SIP) submittal from Missouri concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Missouri are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X) and one of CSAPR's two Federal trading programs for annual emissions of sulfur dioxide (SO_2). This action would approve Missouri's adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Missouri units of CSAPR allowances for annual NO_X emissions and annual SO_2 emissions for 2017 and later years. EPA is proposing to approve the SIP revision because it meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision would not alter any provision of CSAPR's Federal trading programs for annual NO_X emissions and annual SO_2 emissions as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those trading programs (as modified by the SIP revision) would remain in place. EPA is not proposing to act at this time on the portion of Missouri's SIP submittal concerning allocations of CSAPR allowances for ozone-season NO_X emissions.

DATES: Comments must be received by July 28, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0302, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219; telephone number: (913) 551–7041; email address: *gonzalez.larry@epa.gov*

SUPPLEMENTARY INFORMATION: This document proposes to take action on a revision to the SIP for Missouri concerning allocations of allowances used in the CSAPR[1] Federal trading program for annual emissions of NO_X and annual emission of SO_2. We have published a direct final rule approving the State's SIP revision (s) in the Rules and Regulations section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Large electricity generating units in Missouri are subject to CSAPR FIPs that require the units to participate in the Federal CSAPR NO_X Annual Trading Program and the Federal CSAPR SO_2 Group 1 Trading Program.[2] Each of CSAPR's Federal trading programs includes default provisions governing the allocation among participating units of emission allowances used for compliance under that program. CSAPR also provides a process for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in the direct final rule incorporates into Missouri's SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Missouri units of CSAPR NO_X Annual allowances and CSAPR SO_2 Group 1 allowances issued for the control periods in 2017 and later years. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of the SIP revision does not alter any provision of the CSAPR NO_X Annual Trading Program or the CSAPR SO_2 Group 1 Trading Program as applied to Missouri units other than the allowance allocation provisions, and the FIPs requiring the units to participate in those programs (as modified by the SIP revision) remain in place. Large electricity generating units in Missouri are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR NO_X Ozone Season Trading Program. While Missouri's SIP submittal also seeks to replace the default allocations of CSAPR NO_X Ozone Season allowances to Missouri units, EPA is not proposing to act on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on the CSAPR NO_X Ozone Season Trading Program as applied to Missouri units, and the FIP requiring the units to participate in that program remains in place.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

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[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011), (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

[2] EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706, 75759 (December 3, 2015). EPA uses the updated terms here.

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 16, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–15047 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–9948–49–Region 1]

Ocean Disposal; Proposed Designation of a Dredged Material Disposal Site in Eastern Region of Long Island Sound; Reopening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; reopening of the public comment period.

SUMMARY: The Environmental Protection Agency (EPA) today is reopening the public comment period on the proposed rule and Supplemental Environmental Impact Statement to designate one dredged material disposal site, the Eastern Long Island Sound Disposal Site (ELDS), located offshore from New London, Connecticut, for the disposal of dredged material from harbors and navigation channels in eastern Long Island Sound in the states of Connecticut and New York. The proposed rule published on April 27, 2016 (81 FR 24748). This action is necessary to provide a long-term, open-water dredged material disposal site as an alternative for the possible future disposal of such material.

DATES: Comments must be received on or before July 18, 2016.

ADDRESSES: Written comments should be sent to *ELIS@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Jean Brochi, U.S. Environmental Protection Agency, New England Regional Office, 5 Post Office Square, Suite 100, Mail Code: OEP06–1, Boston, MA 02109–3912, telephone: (617) 918–1536, fax number: (617) 918–0536; email address: *Brochi.Jean@epa.gov* or *ELIS@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Review of Documents: The file supporting this proposed designation is available for inspection at the following locations:

In person. The Proposed Rule and the DSEIS, which includes the Site Management and Monitoring Plan (SMMP) for the ELDS, as well as the U.S. Army Corps of Engineers' Dredged Material Management Plan (DMMP) and Programmatic Environmental Impact Statement (PEIS), are available for inspection at the EPA Region 1 Library, Five Post Office Square, Boston, MA, 02109.

Electronically. You may also review and/or obtain electronic copies of these documents and various other supporting documents from EPA's Web site:*https://www.epa.gov/ocean-dumping/dredged-material-management-long-island-sound.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: June 21, 2016.

H. Curtis Spalding,

Regional Administrator, EPA Region 1—New England.

[FR Doc. 2016–15299 Filed 6–27–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 13, and 19

[FAR Case 2016–004; Correction; Docket No. 2016–0004, Sequence No. 1]

RIN 9000–AN18

Federal Acquisition Regulation: Acquisition Threshold for Special Emergency Procurement Authority; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule; correction.

SUMMARY: DoD, GSA, and NASA are issuing a correction to FAR Case 2016–004; Acquisition Threshold for Special Emergency Procurement Authority, which was published in the **Federal Register** at 81 FR 39882, June 20, 2016.

DATES: *Effective:* June 28, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Camara Francis, Procurement Analyst, at 202–550–0935 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755. Please cite FAR Case 2016–004; Correction.

SUPPLEMENTARY INFORMATION:

Correction

In rule FR Doc. 2016–14413, published in the **Federal Register** at 81 FR 39882, June 20, 2016, make the following correction:

On page 39883, in the third column, section 13.003, third line, remove "$750,00" and add "$750,000" in its place.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

Dated: June 23, 2016.

William Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–15237 Filed 6–27–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2015–0001; 50120–1113–000]

RIN 1018–AY05

Endangered and Threatened Wildlife and Plants; Removing Eastern Puma (=Cougar) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our June 17, 2015, proposed rule to remove the eastern puma (=cougar) (*Puma (=Felis) concolor couguar*) from the Federal List of Endangered and Threatened Wildlife. We are reopening the comment period for 30 days to conduct peer review. Interested parties are also afforded this additional opportunity to comment on the proposed rule; comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final listing determination.

DATES: To allow us adequate time to consider comments on the proposed rule, we must receive them on or before July 28, 2016.

ADDRESSES: *Written comments:* You may submit comments on the proposed rule by one of the following methods:

- *Federal eRulemaking Portal:* Go to the Federal eRulemaking Portal: *http://*

www.regulations.gov. In the Search box, enter the docket number for the proposed rule, which is FWS–R5–ES–2015–0001. Then click on the Search button. On the resulting page, you may submit a comment by clicking on "Comment Now!" Please ensure that you have found the correct rulemaking before submitting your comment.

- *By U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS–R5–ES–2015–0001, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information provided to us (see **SUPPLEMENTARY INFORMATION** for more information).

Document availability: Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0001.

FOR FURTHER INFORMATION CONTACT: Martin Miller, Northeast Regional Office, telephone 413–253–8615; or Mark McCollough, Maine Field Office, telephone 207–866–3344, extension 115. Individuals who are hearing impaired or speech impaired may call the Federal Information Relay Service at (800) 877–8339 for TTY assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: On June 17, 2015, we published a proposed rule (80 FR 34595) to remove the eastern puma (=cougar) from the Federal List of Endangered and Threatened Wildlife based on a thorough review of the best available scientific and commercial data, which indicate that this species is extinct and no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). We sought comments and information from the public regarding the proposal during a 60-day comment period ending August 17, 2015. We are reopening the comment period on that proposed rule for an additional 30 days (see **DATES**, above). We will accept written comments and information during this reopened comment period. We are specifically soliciting comments from peer reviewers (see *Peer Review,* below). Please refer to the proposed rule for more information on our proposed action and the specific comments and information we seek.

You may submit your comments and information concerning the proposed rule by one of the methods listed in **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. All comments and recommendations, including names and addresses, will become part of the administrative record.

If you submit information via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If you mail or hand deliver a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review, but we cannot guarantee that we will be able to do so. To ensure that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy submissions on *http://www.regulations.gov.*

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we are soliciting the expert opinions of at least three appropriate and independent specialists regarding the science in our proposed rule published on June 17, 2015 (80 FR 34595). The purpose of such review is to ensure that we base our decisions on scientifically sound data, assumptions, and analyses. We are sending peer reviewers copies of the proposed rule and inviting them to comment, during this reopened public comment period, on the specific assumptions and conclusions regarding the proposed delisting. We will summarize the opinions of these reviewers in the final decision document, and we will consider their input and any additional information we receive as part of our process of making a final decision on the proposal. Such communication may lead to a final decision that differs from the proposal.

Dated: June 20, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–15227 Filed 6–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 150817733–6519–02]

RIN 0648–BF32

Endangered and Threatened Species; Critical Habitat for the Endangered Carolina and South Atlantic Distinct Population Segments of Atlantic Sturgeon; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; correction.

SUMMARY: NMFS published in the **Federal Register** of June 3, 2016, a document proposing to designate critical habitat for the endangered Carolina distinct population segment of the Atlantic sturgeon (Carolina DPS of Atlantic sturgeon) and the endangered South Atlantic distinct population segment of the Atlantic sturgeon (South Atlantic DPS of Atlantic sturgeon) pursuant to section 4 of the Endangered Species Act (ESA). This correction clarifies what types of man-made structures are not included in the proposed designation.

DATES: Comments on this proposal must be received by September 1, 2016.

ADDRESSES: You may submit comments, identified by the docket number NOAA–NMFS–2015–0157, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0157* click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701. Instructions: You must submit comments by one of the above methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or

received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jason Rueter, NMFS, Southeast Regional Office, 727–824–5312, *Jason.Rueter@noaa.gov;* Andrew Herndon, Southeast Regional Office, 727–824–5312, *Andrew.Herndon@noaa.gov;* Lisa Manning, NMFS, Office of Protected Resources, 301–427–8466, *Lisa.Manning@noaa.gov.*

Correction

The proposed rule that published in the **Federal Register** on June 3, 2016 (81 FR 36078), contained misleading language regarding what areas were not to be considered part of the proposed designation. The original language inadvertently identified "marinas" and "maintained channels" as examples of areas not included. Because marinas and maintained channels may contain the physical features essential for the conservation of the species, these areas should be included in critical habitat. Further, the original language did not specify a date by which such structures would have to be in place to be considered "existing". Therefore, we are clarifying what is meant by the term "man-made structures," and we are inserting an effective date by which such structures would be covered under this provision.

Correction

In proposed rule FR Doc. 2016–12744 beginning on page 36078 in the issue of June 3, 2016, make the following correction.

§ 226.226 [Corrected]

On page 36101 in the third column, paragraph (d) of § 226.226 is corrected to read as follows:

"(d) *Areas not Included in Critical Habitat.* Pursuant to ESA section 3(5)(A)(i), critical habitat does not include areas containing existing (already constructed), as of [EFFECTIVE DATE OF FINAL RULE], federally authorized or permitted man-made structures where the physical features are not expected to be found, such as aids-to- navigation (ATONs), artificial reefs, boat ramps, docks, or pilings within the legal boundaries."

Dated: June 17, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–15045 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 124
Tuesday, June 28, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

June 23, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by July 28, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Federal Seed Act Program.

OMB Control Number: 0581–0026.

Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.

Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine if the precautions taken by the shipper assure that the seed was accurately labeled and determine the corrective steps that can be taken by the shipper to prevent future violations. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 3,245.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 29,793.

Agricultural Marketing Service

Title: Regulations Governing Inspection Certification of Fresh and Processed Fruits, Vegetables and Other Products—7 CFR part 51 and 52.

OMB Control Number: 0581–0125.

Summary of Collection: The Agricultural Marketing Act of 1946 as amended, (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture to inspect, certify and identify the class, quantity, quality and condition of agricultural produces when shipped or received in interstate commerce, under such rules and regulations as the Secretary may prescribe, etc. The Secretary has delegated this authority to the AMS Specialty Crops Inspection Division (SCI). The SCI Division provides nationwide audit and inspection services for fresh and processed fruits, vegetables, and other products to growers, shippers, importers, processors, sellers, buyers, and other financially interested parties on a "user fee" basis.

Approved collection "Specialty Crop Inspection Division Order Forms" 0581–0292 is being merged into and totals for both collections are combined in this renewal request. With this submission and merging of the two approved collections, the Division will be better able to efficiently manage the collection and prevent duplication of burden.

Need and Use of the Information: The SCI Division collects information using various forms. This information includes: The name and location of the person or company shipping and receiving the product(s), the name and location of the person or company requesting the inspection, the date and time the inspection is requested to be performed, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product. The information collected provides services for inspection, grading, certification purposes, and other services to facilitate trading of agricultural products, *e.g.,* providing import product inspections, export product inspections, contract and specification acceptance services, facility assessments, and certification of quantity and quality; verification and auditing; and developing standards for grades of products.

Description of Respondents: Business or other for profit.

Number of Respondents: 58,314.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 25,283.

Agricultural Marketing Service

Title: Seed Service Testing Program.

OMB Control Number: 0581–0140.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended by 7 U.S.C. 1621 authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. The purpose of the voluntary program is to promote efficient, orderly marketing of seeds and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for factors such as purity and germination at the request of the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS that test the seed and issues the certificates is the only Federal seed testing facility that can issue the Federal Seed Analysis Certificate.

Need and Use of the Information: Applicants generally are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. The only information collected is information needed to provide the service requested by the applicant. Applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment if present, along with a sample of seed in order for AMS to provide the service. A Seed Analysis Certificate-Sample Inspection LS–375 or ISTA Orange International Seed Lot Certificate is issued by AMS giving the test results. Only authorized AMS employees will use the information collected to track, test, and report test results to the applicant. If the information were not collected, AMS would not know which test to conduct or would not be able to relate the test results with a specific lot of seed.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 315.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–15199 Filed 6–27–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Submission for OMB Review; Comment Request

June 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by July 28, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commentors are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Secure Rural Schools Act.

OMB Control Number: 0596–0220.

Summary of Collection: The Secure Rural Schools and Community Self-Determination Act of 2000 (the Act) reauthorized in Public Law 110–343, requires the appropriate official of a county that receives funds under Title III of the Act to submit to the Secretary of Agriculture or the Secretary of the Interior, as appropriate, an annual certification that the funds have been expended for the uses authorized under section 302(a) of the Act. Participating counties will also report amounts not obligated by September 30 of the previous year. The information will be collected annually in the form of conventional correspondence such as a letter and, at the respondent's option, attached tables or similar graphic display. At the respondent's discretion, the information may be submitted by hard copy and/or electronically scanned and included as an attachment to electronic mail.

Need and Use of the Information: The information collected will identify the participating county and the year in which the expenditures were made and will include amounts not obligated by September 30 of the previous year. Information includes the name, title, and signature of the official certifying that the expenditures were for uses authorized under section 302(a) of the Act, and the date of the certification. Information will also be collected including the amount of funds expended in the applicable year and the uses for which the amount were expended referencing the authorized categories: (1) Carry out activities under the Firewise Communities program; (2) reimburse the participating county for emergency services performed on Federal land and paid for by the participating county; and (3) to develop community wildfire protection plans in coordination with the appropriate Secretary or designee. The information will be used to verify that participating counties have certified that funds were expended as authorized in the Act.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 360.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 8,640.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–15198 Filed 6–27–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for Lake Tahoe Basin Management Unit Land Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of plan approval for the Lake Tahoe Basin Management Unit.

SUMMARY: Regional Forester Randy Moore signed the final Record of Decision (ROD) for the Lake Tahoe Basin Management Unit (LTBMU) revised Land Management Plan (Plan) on June 20, 2016. The final ROD documents the Regional Forester's decision and rationale for approving the revised Plan.

DATES: The effective date of the Plan is 30 calendar days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: To view the final ROD, revised Plan, FEIS, and other related documents, please visit the LTBMU Web site at *http://www.fs.usda.gov/goto/ltbmu/ForestPlanRevision.*

Further information about the LTBMU planning process can be obtained from Mike LeFevre during normal office hours (weekdays 8:00 a.m. to 4:30 p.m. at the LTBMU Supervisor's Office. Phone/voicemail: 530–543–2641. Address: Lake Tahoe Basin Management Unit; 35 College Drive; South Lake Tahoe, CA 96150. Individuals who use telecommunication devices for the deaf (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The revised Plan describes desired conditions, objectives, standards and guidelines, and identifies lands suitable for various uses. The Plan will guide project and activity decision making and resource management activities on the LTBMU for the next 15 years. The Plan is part of the long-range resource planning framework established by the Forest and Rangeland Renewable Resources Planning Act and the National Forest Management Act.

Dated: June 20, 2016.

Randy Moore,

Regional Forester, Pacific Southwest Region.

[FR Doc. 2016–15284 Filed 6–27–16; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the South Dakota Advisory Committee to the Commission will convene at 12:00 p.m. (MDT) on Wednesday, July 6, 2016, via teleconference. The purpose of the meeting is to discuss planning progress made towards conducting a briefing meeting on Examining the Subtle Effects of Racism in South Dakota.

Members of the public may listen to the discussion by dialing the following Conference Call Toll-Free Number: 1–888–427–9411; Conference ID: 6491624. Please be advised that before being placed into the conference call, the operator will ask callers to provide their names, their organizational affiliations (if any), and an email address (if available) prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free phone number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service (FRS) at 1–800–977–8339 and provide the FRS operator with the Conference Call Toll-Free Number: 1–888–427–9411, Conference ID: 6491624. Members of the public are invited to submit written comments; the comments must be received in the regional office by Thursday, May 5, 2016. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1050, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *http://www.facadatabase.gov/committee/meetings.aspx?cid=274* and clicking on the "Meeting Details" and "Documents" links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

AGENDA:

- Welcome and Roll Call
  Richard Braunstein, Chair, South Dakota Advisory Committee
  Malee V. Craft, Regional Director, Rocky Mountain Regional Office (RMRO)
- Update on Progress of Planning Briefing Meeting on Examining the Subtle Effects of Racism in South Dakota
- Continue planning for future briefing
- Next Steps

DATES: Wednesday, July 6, 2016, at 12:00 p.m. (MDT)

ADDRESSES: To be held via teleconference:

Conference Call Toll-Free Number: 1–888–427–9411, Conference ID: 6491624.

TDD: Dial Federal Relay Service 1–800–977–8339 and give the operator the above conference call number and conference ID.

FOR FURTHER INFORMATION CONTACT: Malee V. Craft, DFO, *mcraft@usccr.gov,* 303–866–1040.

EXCEPTIONAL CIRCUMSTANCE: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of technical difficulties. Given the exceptional urgency of the events, the agency and advisory committee deem it important for the advisory committee to meet on the date given.

Dated: June 23, 2016.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2016–15233 Filed 6–27–16; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; West Coast Region, Pacific Coast Groundfish Fishery: Trawl Rationalization Cost Recovery Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Biegel, (503) 231–6291 or *christopher.biegel@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The Magnuson-Stevens Fishery Conservation and Management Act requires that the Secretary of Commerce maintain a cost recovery program to cover part of the management, data collection, and enforcement costs of the limited access privilege programs, such as the Pacific coast groundfish fishery's trawl rationalization program. This cost recovery program requires fish sellers to submit fees to fish buyers who then submit those fees to the National Marine Fisheries Service (NMFS) and include information about the volume and value of groundfish. Information is collected from monthly and annual reports as well as non-payment documents when necessary.

This program is authorized under the Pacific coast groundfish fishery regulations, trawl rationalization cost recovery program at 50 CFR 660.115.

II. Method of Collection

Most information is submitted electronically through the Federal web portal Pay.gov, though some may be submitted by mail or email.

III. Data

OMB Control Number: 0648–0663.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 116.

Estimated Time per Response: Cost recovery forms: 1 hour; Failure to pay report: 4 hours; Annual report: 1 hour.

Estimated Total Annual Burden Hours: 1,304.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 23, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–15216 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE676

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Puerto Rico's Department of Natural and Environmental Resources (PR DNER). If granted, the EFP would authorize the PR DNER to conduct two projects in waters of the Puerto Rico exclusive economic zone (EEZ) to collect fishery-independent data on the abundance, distribution, and reproductive condition of reef fish in eastern and western Puerto Rico. For the first project, the EFP would authorize the PR DNER to harvest reef fish by hook-and-line and bottom longline gear off both the west and east coasts of Puerto Rico. All reef fish, including undersized and seasonally prohibited reef fish species, would be retained, except for goliath grouper, Nassau grouper, and all species of parrotfish. The purpose of the EFP for the first project is to determine spatial and temporal variations in stock abundance of Caribbean reef fish resources off Puerto Rico.

The second project in the EFP would authorize the PR DNER to collect various species of recreationally important reef fish by spear gun and hook-and-line fishing in Federal waters off the west coast of Puerto Rico. The purpose of the second project is to obtain information about the annual reproductive cycle and minimum size of sexual maturation of the collected reef fish species.

DATES: Comments must be received no later than July 28, 2016.

ADDRESSES: You may submit comments on the application by either of the following methods:

- *Email: Maria.Lopez@noaa.gov.* Include in the subject line of the email comment the following document identifier: "PR DNER_EFP 2016".
- *Mail:* Maria del Mar Lopez, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

The application and related documents are available for review upon written request to any of the above addresses.

FOR FURTHER INFORMATION CONTACT: Maria del Mar Lopez, telephone: 727–824–5305, email: *Maria.Lopez@noaa.gov.*

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b) concerning exempted fishing.

The proposed collection for scientific research involves activities that would otherwise be prohibited by regulations at 50 CFR part 622, as they pertain to Caribbean reef fish managed by the Caribbean Fishery Management Council (Council). The EFP would exempt this research activity from Federal regulations at § 622.435(a) (Seasonal and area closures), § 622.436 (Size limits), and § 622.437 (Bag limits).

This action involves activities covered by regulations implementing the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands. The applicant requests authorization to collect reef fish species through two projects in the Federal waters off the east and west coasts of Puerto Rico. Specimens would be collected by commercial fishermen contracted through the PR DNER, by PR DNER research vessels, and by private vessels contracted by the PR DNER. The applicant has requested the EFP for both projects to be effective from the date of EFP issuance through May 31, 2018.

The first project would continue the collection of information on reef fish abundance and distribution in Federal waters off eastern and western Puerto Rico as part of the ongoing Southeast Area Monitoring and Assessment Program-Caribbean (SEAMAP–C) Reef Fish Monitoring Project that has recently undergone survey protocol revisions. Research in Federal waters would consist of harvesting reef fish at approximately 20 stations in the EEZ off the west coast of Puerto Rico, west of 67°00′00″ W. long., and approximately at 10 stations in the EEZ off the east coast of Puerto Rico, from the Fajardo coast to north of Culebra Island and east of Vieques Island. Stations and sampling dates for this first project would be randomly selected. Sampling would be conducted by (1) bottom longline fishing, (2) hook-and-line gear, and (3) underwater cameras to identify and quantify reef fish species. The hook-and-line gear sampling would take place while EFP authorized vessels are both drifting and anchored. Species expected to be caught and landed for the EFP include federally managed schoolmaster, lane, vermilion, yellowtail, mutton, silk, and blackfin snappers; and red hind, coney, graysby, yellowfin, yellowedge, red, tiger, and black groupers. All reef fish, including undersized and seasonally prohibited species, would be retained, except for goliath grouper, Nassau grouper, and all species of parrotfish. The EFP for the first project would allow the following estimated amounts of these species groups to be harvested: A total of 240 lb (108 kg) of red hind grouper, a total of 100 lb (45 kg) of yellowfin, red, tiger, black (Grouper Unit 4) and yellowedge (Part of Grouper Unit 5) groupers, a total of 100 lb (45 kg) of silk, black, blackfin, and vermilion snappers (Snapper Unit 1), and a total of 600 lb (272 kg) of mutton, lane, gray, and schoolmaster snappers (Snapper Unit 3). Harvest of these reef fish species may occur during their respective spawning seasonal closure periods as described at 50 CFR 622.435. The EFP would allow the harvest of 500 lb (227 kg) of yellowtail snapper, which may include fish under the legal minimum size of 12 in (30.5 cm), total length. Fish collected in the first project would also provide some of the samples to be used in the second project that is part of this EFP request.

The bottom longline fishing component of the first project would occur at randomly selected stations at 0–10, 11–20, and 21–50 fathoms. There would be approximately 20 stations in the EEZ off the west coast and approximately 10 stations in the EEZ off the east coast of Puerto Rico. The sampling stations and dates of sampling would be randomly selected by the PR DNER and may also vary according to weather and sampling logistics. Sampling may occur during closed seasons in Federal waters or in areas closed to certain fishing activities. Sampling in the first project would occur between the hours of 5:30 a.m. and 5:30 p.m., local time. The bottom longline would be anchored at each end, with surface buoys attached to allow retrieval and identification. Circle hooks would be used for the bottom longline gear and the gear would soak for 45 minutes for each sample, after which it would be retrieved and the reef fish collected. The bottom longline would be set to minimize any impacts to bottom habitat by avoiding coral reefs and by fastening small buoys at intervals between hooks to ensure the line remains suspended above the bottom to avoid entanglement. For each bottom longline trip, the following data would be recorded: Date; time of first and last hook deployment and recovery; station code; latitude and longitude; fishing time to the nearest minute; weather conditions; depth; total number of hooked fished per vessel; number, weight, length, reproductive condition, and species level identification of fish by individual longline set; and substrate and/or habitat type.

The hook-and-line sampling for the first project would take place while project vessels are both drifting and an anchored. For each hook-and-line samples, sample locations will be selected based on depth and habitat criteria for both the west and east coasts of Puerto Rico. Hook-and-line gear stations would occur at 0–10, 11–20, and 21–50 fathoms. Each sampling area would be sampled twice during the period of the EFP and there would be approximately 20 stations in the Federal waters off the west coast and 10 stations in the Federal waters off the east coast of Puerto Rico. Sampling station and date of sample would be randomly selected and may also vary according to weather and sampling logistics. The hook-and-line gear sampling for the first project would consist of 2 hours drifting and 2 hours anchored. The hook-and-line sampling to occur while anchored would be conducted for 30 minutes at 4 different sampling stations. The hook-and-line fishing while the vessels are drifting would be conducted in 15-minute intervals near the anchor sampling stations for up to a total of 2 hours per sampling site. For each hook-and-line trip, the following data would be recorded: Date, time of EFP vessel trips; station location (latitude and longitude); fishing time for hook-and-line gear to the nearest 15 minutes; weather conditions; depth; total number of hooked fished per vessel; number, weight, length, reproductive condition, and identification of reef fish per hook-and-line; and stratified habitat type or substrate type.

As part of the first project, a camera survey would be also be used to develop a procedure that would allow for reef fish species identification, counts, and size measurements. There would be a total of approximately 60 camera sampling trips to cover the randomly pre-selected stations for the east and west coasts of Puerto Rico. The camera array would be deployed for 60 minutes at sites near those of the bottom longline fishing sites.

The second project requested as part of this EFP would employ histological methods to describe the annual reproductive cycle and minimum size at maturity of mutton snapper, red hind, coney, white grunt, tomtate, and pluma porgy in waters off the west coast of Puerto Rico. Gonads would be collected from these species and preserved for histological analysis of species by the PR DNER. Information obtained as part of this study would potentially allow for determination of sex, reproductive stage, spawning season, and size of maturity of the collected reef fish species. Sampling for this second project would consist of approximately 10 trips in the Federal waters off the west coast of Puerto Rico. Twice per month, PR DNER contracted fishers would use hook-and-line gear and spear guns to collect a minimum of 25 samples per trip of each of the second project's reef fish species, covering a wide size range of these species. Fishing would be conducted for 6–10 hours on a sampling day. Fish samples would be collected mainly by contracted fishermen. Any other species incidentally caught by hook-and-line fishers would be released, including

Nassau and goliath groupers, and all species of parrotfish.

For this second project, the EFP would allow the collection of a total of 150 lb (68 kg) of red hind during their closed spawning season of December 1 through the last day of February in Caribbean EEZ waters west of 67°10′00″ W. long.; and the collection of a total of 150 lb (68 kg) of mutton snapper, which may occur during its seasonal closure, which runs from April 1 through June 30 in the Caribbean EEZ. After being harvested and sampled, all reef fish that were collected would be donated to a local zoo.

The NMFS New Procedures and Actions for Incidental Takes of Marine Mammals in Research and Monitoring Activities policy, approved in 2015, would be followed in the event of any incidental captures of marine mammals. Anchoring in Federal waters to conduct fishing activities would occur up to a maximum of 10 times in areas that do not affect corals. Anchoring and fishing activities would not take place in the spawning aggregation managed areas of Bajo de Sico, Tourmaline, or Abrir La Sierra, west of Puerto Rico.

For both projects of the EFP, samples would be collected aboard research vessels owned by PR DNER and aboard private vessels contracted by the PR DNER. These vessels will be operated by PR DNER personnel or commercial fishermen and/or boat operators under contract with PR DNER. Each research vessel's home port is located in Puerto Rico.

NMFS finds this application warrants further consideration, based on a preliminary review. Possible conditions the agency may impose on this permit, if it is indeed granted, include but are not limited to, a prohibition on conducting research within marine protected areas, marine sanctuaries, or special management zones, without additional authorization. Additionally, NMFS would require any sea turtles taken incidentally during the course of fishing or scientific research activities to be handled with due care to prevent injury to live specimens, observed for activity, and returned to the water. A final decision on issuance of the EFP will depend on NMFS' review of public comments received on the application, consultations with the affected state(s), the Council, and the U.S. Coast Guard, and a determination that it is consistent with all applicable laws.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 22, 2016.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–15154 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; California-Oregon-Washington Coastal Purse Seine Survey.

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to James Hilger, (858) 546–7140 *or james.hilger@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a new collection of information.

The Southwest Fisheries Science Center (SWFSC) is undertaking an economics data collection effort for the West Coast Coastal Pelagic Species (CPS) fleet to improve the SWFSC's capability to do the following: (1) Describe and monitor economic performance (*e.g.,* profitability, capacity utilization, efficiency, and productivity) and impacts (*e.g.,* sector, community, or region-specific employment and income); (2) determine the quantity and distribution of net benefits derived from living marine resources; (3) understand and predict the ecological, and behavior of participants in Federally managed commercial fisheries; (4) predict the biological, ecological, and economic impacts of existing management measures and alternative proposed management actions; and, (4) in general, more effectively conduct the analyses required under the MSA, the Endangered Species ACT (ESA), and the Marine Mammal Protection Act (MMPDA), the National Environmental Policy Act (NEP), and Regulatory Flexibility Act (RFA), Executive Order 12866, and other applicable law.

CPS fishery participants are defined as US west-coast purse seine vessels participating in the coastal pelagic species (CPS) fisheries—northern anchovy, Pacific mackerel, Pacific sardine, and/or market squid), we intend to survey all Washington-Oregon-California coastal purse seine vessels with sardine landings in any year between 2015 and the initiation of the survey. This includes vessels fishing off California in the limited entry program under the CPS Fishery Management Plan (FMP) and State permitted vessels fishing off Washington and Oregon.

II. Method of Collection

CPS fishery participants will be contacted and screened to participate in the data collection. A cost and earnings survey will be scheduled and administered to eligible respondents as appropriate. Screener, scheduling and survey modes may include in-person, internet, phone, or mail.

III. Data

OMB Control Number: 0648–xxxx.

Form Number(s): None.

Type of Review: Regular submission (request for a new information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Response: 5 minutes for screener; 5 minutes to schedule survey for qualified and interested respondents; 60 minutes for the survey.

Estimated Total Annual Burden Hours: 95.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 23, 2016.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–15215 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 150506425–6516–02]

RIN 0648–XD941

Endangered and Threatened Wildlife and Plants; Notice of 12-Month Finding on Petition To List the Smooth Hammerhead Shark as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 12-month finding and availability of status review document.

SUMMARY: We, NMFS, announce a 12-month finding on a petition to list the smooth hammerhead shark (*Sphyrna zygaena*) as threatened or endangered under the Endangered Species Act (ESA). We have completed a comprehensive status review of the smooth hammerhead shark in response to this petition. Based on the best scientific and commercial information available, including the status review report (Miller 2016), we have determined that the species does not warrant listing at this time. We conclude that the smooth hammerhead shark is not currently in danger of extinction throughout all or a significant portion of its range and is not likely to become so within the foreseeable future.

DATES: This finding was made on June 28, 2016.

ADDRESSES: The status review report for the smooth hammerhead shark is available electronically at: *http://www.fisheries.noaa.gov/pr/species/fish/smooth-hammerhead-shark.html.* You may also receive a copy by submitting a request to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, Attention: Smooth Hammerhead Shark 12-month Finding.

FOR FURTHER INFORMATION CONTACT: Maggie Miller, NMFS, Office of Protected Resources, (301) 427–8403.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2015, we received a petition from Defenders of Wildlife to list the smooth hammerhead shark (*Sphyrna zygaena*) as threatened or endangered under the ESA throughout its entire range, or, as an alternative, to list any identified Distinct Population Segment (DPS) as threatened or endangered. The petitioners also requested that critical habitat be designated for the smooth hammerhead under the ESA. In the case that the species does not warrant listing under the ESA, the petition requested that the species be listed based on its similarity of appearance to the listed DPSs of the scalloped hammerhead shark (*Sphyrna lewini*). On August 11, 2015, we published a positive 90-day finding (80 FR 48053) announcing that the petition presented substantial scientific or commercial information indicating the petitioned action of listing the species may be warranted and explained the basis for that finding. We also announced the initiation of a status review of the species, as required by Section 4(b)(3)(a) of the ESA, and requested information to inform the agency's decision on whether the species warranted listing as endangered or threatened under the ESA.

Listing Species Under the Endangered Species Act

We are responsible for determining whether smooth hammerhead sharks are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a "species" under Section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." On February 7, 1996, NMFS and the U.S. Fish and Wildlife Service (USFWS; together, the Services) adopted a policy describing what constitutes a DPS of a taxonomic species (61 FR 4722). The joint DPS policy identified two elements that must be considered when identifying a DPS: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs.

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, in the context of the ESA, the Services interpret an "endangered species" to be one that is presently at risk of extinction. A "threatened species" is not currently at risk of extinction, but is likely to become so in the foreseeable future. The key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened).

The statute also requires us to determine whether any species is endangered or threatened as a result of any one or a combination of the following five factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence (ESA section 4(a)(1)(A)–(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any State or foreign nation or political subdivision thereof to protect the species. In evaluating the efficacy of existing domestic protective efforts, we rely on the Services' joint *Policy on Evaluation of Conservation Efforts When Making Listing Decisions* ("PECE"; 68 FR 15100; March 28, 2003) for any conservation efforts that have not been implemented, or have been implemented but not yet demonstrated effectiveness.

Status Review

The status review for the smooth hammerhead shark was conducted by a NMFS biologist in the Office of

Protected Resources (Miller 2016). The status review examined the entire species' status throughout its range and also evaluated if any portion of the smooth hammerhead shark's range was significant as defined by the Services Significant Portion of its Range (SPR) Policy (79 FR 37578; July 1, 2014).

In order to complete the status review, information was compiled on the species' biology, ecology, life history, threats, and status from information contained in the petition, our files, a comprehensive literature search, and consultation with experts. We also considered information submitted by the public in response to our petition finding. In assessing extinction risk of the smooth hammerhead shark, we considered the demographic viability factors developed by McElhany *et al.* (2000). The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped and great hammerhead sharks, and black abalone (see *http://www.nmfs.noaa.gov/pr/species/* for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four viable population descriptors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viable population descriptors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk (NMFS 2015b).

The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The status review report was peer reviewed by three independent specialists selected from the academic and scientific community, with expertise in shark biology, conservation and management, and knowledge of smooth hammerhead sharks. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the status review, including the extinction risk analysis. All peer reviewer comments were addressed prior to dissemination of the final status review report and publication of this determination.

We subsequently reviewed the status review report, its cited references, and peer review comments, and believe the status review report, upon which this 12-month finding is based, provides the best available scientific and commercial information on the smooth hammerhead shark. Much of the information discussed below on smooth hammerhead shark biology, distribution, abundance, threats, and extinction risk is attributable to the status review report. However, in making the 12-month finding determination, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in Section 4(a)(1)(A)–(E) and our regulations regarding listing determinations. The status review report is available on our Web site (see **ADDRESSES** section) and the peer review report is available at *http://www.cio.noaa.gov/services_programs/prplans/PRsummaries.html.* Below is a summary of the information from the report and our analysis of the status of the smooth hammerhead shark. Further details can be found in Miller (2016).

Description of the Petitioned Species

Taxonomy and Species Description

All hammerhead sharks belong to the family Sphyrnidae and are classified as ground sharks (Order Carcharhiniformes). Most hammerheads belong to the Genus *Sphyrna* with one exception, the winghead shark (*Eusphyra blochii*), which is the sole species in the Genus *Eusphyra.* The smooth hammerhead was first described in 1758 by Karl Linnaeus and named *Squalus zygaena;* however, this name was later changed to the current scientific species name of *Sphyrna zygaena* (Linneaus 1758) (Bester n.d.).

The hammerhead sharks are recognized by their laterally expanded head that resembles a hammer (hence the common name "hammerhead"). In comparison to the other hammerhead sharks, the head of the smooth hammerhead shark has a scalloped appearance but a rounded un-notched anterior margin (which helps to distinguish it from scalloped hammerhead sharks) and depressions opposite each nostril. The smooth hammerhead also has a ventrally located and strongly arched mouth with smooth or slightly serrated teeth (Compagno 1984). The body of the shark is fusiform, lacks a mid-dorsal ridge, and has a moderately tall and hooked first dorsal fin and a lower second dorsal fin that is shorter than the notched anal fin (Compagno 1984; Bester n.d.). The color of the smooth hammerhead shark ranges from a dark olive to greyish-brown and fades into a white underside, which is different than most other hammerhead species whose colors are commonly brown (Bester n.d.).

Range and Habitat Use

The smooth hammerhead shark is a circumglobal species, found worldwide in temperate to tropical waters between 59 °N. and 55 °S. latitudes (CITES 2013). It is thought to be the hammerhead species most tolerant of temperate waters (Compagno 1984). In the northwestern Atlantic Ocean, the range of the smooth hammerhead shark extends from Nova Scotia, Canada to Florida, and partly into the Caribbean; however, the species is said to be rare in Canadian waters and only found offshore in the Gulf Stream (Fisheries and Oceans Canada 2010). Additionally, its presence off the Caribbean Islands cannot be confirmed, although these waters are noted to be part of its range in Compagno (1984). In the southwestern Atlantic, the smooth hammerhead shark range extends from Brazil to southern Argentina, and in the eastern Atlantic Ocean, smooth hammerhead sharks can be found from the British Isles to equatorial West Africa and throughout the Mediterranean Sea (Compagno 1984; Bester n.d).

In the Indian Ocean, the shark is found off the coasts of South Africa, within the Persian Gulf, along the southern coast of India, Sri Lanka, and off Indonesia, and along the western and southern coasts of Australia. Its range in the western and central Pacific extends from Japan to Vietnam, including the southeast coast of Australia and waters off New Zealand, the Hawaiian Islands and American Samoa. In the northeastern Pacific, the smooth hammerhead shark range extends from northern California to the Nayarit state of Mexico, and in the southeastern Pacific, the species can be found from Panama to Chile, but is generally rare in Chilean waters (Brito 2004).

The smooth hammerhead shark is a coastal-pelagic and semi-oceanic species and generally occurs close inshore and in shallow waters, most commonly in depths of up to 20 m (CITES 2013). However, the species may also be found over continental and insular shelves to offshore areas in depths as great as 200 m (Compagno 1984; Ebert *et al.* 2013; Bester n.d.). Smooth hammerhead sharks are highly mobile and may undergo seasonal migrations (toward cooler waters in the summer and the reverse in the winter), with juveniles (of up to 1.5 m in length) occasionally forming large aggregations during these migrations (Compagno 1984; Diemer *et al.* 2011; Ebert *et al.* 2013; Bester n.d.).

Adult smooth hammerhead sharks, on the other hand, are generally solitary (Compagno 1984). Based on available tagging data, the species is able to travel significant distances, with various studies showing estimates of total distance travelled of around 919 km (Kohler and Turner 2001), more than 1,609 km (SWFSC 2015), and around 2,220 km (Clarke *et al.* 2015).

Diet and Feeding

The smooth hammerhead shark is a high trophic level predator (trophic level = 4.2; Cortés (1999)) and opportunistic feeder that consumes a variety of teleosts, small sharks (including its own species), dolphins, skates and stingrays, sea snakes, crustaceans, and cephalopods (Nair and James 1971; Compagno 1984; Bornatowski *et al.* 2007; Masunaga *et al.* 2009; Rogers *et al.* 2012; Galvan-Magana *et al.* 2013; Bornatowski *et al.* 2014; Sucunza *et al.* 2015). Skates and stingrays, in particular, tend to comprise the majority of the species' diet in inshore locations (Nair and James 1971; Bester n.d.), whereas in coastal and shelf waters, cephalopods appear to be an important prey item (Bornatowski *et al.* 2007; Bornatowski *et al.* 2014).

Growth and Reproduction

The general life history characteristics of the smooth hammerhead shark are that of a long-lived, slow-growing, and late maturing species. The average size of a smooth hammerhead shark ranges between 2.5–3.5 m in length, but individuals can reach maximum lengths of 5 m and weights of 880 pounds (400 kg) (CITES 2013; Bester n.d.). Based on observed and estimated sizes of smooth hammerhead sharks from both the Atlantic and Pacific oceans, females appear to reach sexual maturity between 250 cm and 290 cm total length (TL). Males are considered sexually mature at smaller sizes than females, with estimates of 210–250 cm TL from the Atlantic and 250–260 cm TL in the western Pacific. More recent data from the eastern Pacific (specifically the Gulf of California) estimate much smaller maturity sizes for smooth hammerhead sharks, with 50 percent of females and males of the population maturing at 200 cm and 194 cm TL, respectively (Nava Nava and Fernando Marquez-Farias 2014). Longevity of the species is unknown but thought to be at least 20 years (Bester n.d.), with female and male smooth hammerhead sharks aged up to 18 years and 21 years, respectively, from the eastern equatorial Atlantic Ocean (Coelho *et al.* 2011).

The smooth hammerhead shark is viviparous (*i.e.*, give birth to live young), with a gestation period of 10–11 months (White *et al.* 2006) and an assumed annual reproductive periodicity; however this has yet to be verified (Clarke *et al.* 2015). Possible pupping grounds and nursery areas for this species (based on the presence of pregnant females, neonates, and juveniles) include the Gulf of California, Gulf of Guinea, Strait of Sicily, coastal and inshore waters off Baja California, Venezuela, southern Brazil, Uruguay, Morocco, the southern and eastern cape of South Africa, Kenya (including Ungwana Bay), and New Zealand (Sadowsky 1965; Castro and Mejuto 1995; Buencuerpo *et al.* 1998; Arocha *et al.* 2002; Celona and Maddalena 2005; Costa and Chaves 2006; Bizzarro *et al.* 2009; Cartamil *et al.* 2011; Coelho *et al.* 2011; Diemer *et al.* 2011; CITES 2013; Kyalo and Stephen 2013; Bornatowski *et al.* 2014; Nava Nava and Fernando Marquez-Farias 2014). Litter sizes range from around 20 to 50 live pups, with an average of around 33 pups, and length at birth is estimated to be between 49–64 cm. The smooth hammerhead shark is estimated to grow an average of 25 cm per year over the first 4 years of its life before slowing down later in its life (Coelho *et al.* 2011).

Demography

Although there are very few age/growth studies, based on the best available data, smooth hammerhead sharks exhibit life-history traits and population parameters that place the species towards the faster growing end along the "fast-slow" continuum of population parameters that have been calculated for 38 species of sharks by Cortés (2002, Appendix 2). In an Ecological Risk Assessment study of 20 species caught in Atlantic pelagic fisheries, Cortés *et al.* (2012) found that the smooth hammerhead shark ranked among the most productive species (with the 4th highest productivity rate; r = 0.225) and had one of the lowest vulnerabilities to pelagic longline fisheries. Based on these estimates, smooth hammerhead sharks can be characterized as having "medium" productivity (based on categorizations in Musick (1999)), with demographic parameters that provide the species with moderate resilience to exploitation.

Population Structure

Due to sampling constraints, very few studies have examined the population structure of the smooth hammerhead shark. Using mitochondrial DNA (which is maternally inherited) Naylor *et al.* (2012) found only a single cluster of smooth hammerhead sharks (in other words, no evidence to suggest matrilineal genetic partitioning of the species). This analysis, however, suffered from low sample size, based on only 16 specimens, but covered the longitudinal distribution of the species (Naylor *et al.* 2012). In contrast, Testerman (2014) analyzed both mitochondrial control region sequences (mtCR; n=303, 1,090 base pair) and 15 nuclear microsatellite loci (n=332) from smooth hammerhead sharks collected from 8 regional areas: Western North Atlantic (n=21); western South Atlantic (n=55); western Indian Ocean (n=63); western South Pacific (n=44); western North Pacific (n=11); eastern North Pacific (n=55); eastern Tropical Pacific (n=15); and eastern South Pacific (n=6). Results from the analysis of mitochondrial DNA indicated significant genetic partitioning, with no sharing of haplotypes, between the Atlantic and Indo-Pacific basins (mtCR φ_{ST}=0.8159) (Testerman 2014). Analysis of the nuclear DNA also showed significant genetic structure between ocean basins (nuclear F_{ST}=0.0495), with the Atlantic and Indo-Pacific considered to comprise two genetically distinct populations (Testerman 2014). However, additional studies are needed to further refine the population structure of the smooth hammerhead shark and confirm the above results, including, as Testerman (2014) suggests, using samples from individual smooth hammerhead sharks of known size class and gender.

Species Finding

Based on the best available scientific and commercial information described above, we determined that *Sphyrna zygaena* is a taxonomically-distinct species and, therefore, meets the definition of "species" pursuant to section 3 of the ESA. Below, we evaluate whether *Sphyrna zygaena* warrants listing under the ESA as an endangered or threatened species throughout all or a significant portion of its range.

Assessment of Extinction Risk

The ESA (Section 3) defines endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range." Threatened species are "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Neither we nor the USFWS have developed any formal policy guidance about how to interpret the definitions of threatened and endangered. For the term "foreseeable future," we define it as the timeframe over which identified threats could be reliably predicted to impact the biological status of the species. For the assessment of extinction risk for smooth hammerhead sharks, the "foreseeable future" was considered to extend out several decades. Given the species' life history traits, with longevity estimated to be greater than 20 years, maturity at around 8 years, and generation time at around 13 years, it would likely take several decades (*i.e.,* multiple generations) for any recent management actions to be realized and reflected in population abundance indices (*e.g.,* impact of declining shark fin trade). Furthermore, as the main potential operative threat to the species is overutilization by commercial and artisanal fisheries (discussed below), this timeframe (*i.e.,* several decades) would allow for reliable predictions regarding the impact of current levels of fishery-related mortality on the biological status of the species. As depicted in the very limited available catch per unit effort (CPUE) time-series data, trends in the species' abundance can manifest within this time horizon.

In evaluating the level of risk faced by a species in deciding whether the species is threatened or endangered, it is important to consider both the demographic risks facing the species as well as current and potential threats that may affect the species' status. To this end, a demographic risk analysis was conducted for the smooth hammerhead shark and considered alongside the information on threats to the species, including those related to the factors specified by the ESA Section 4(a)(1)(A)–(E). Specific methods on the demographic risk analysis can be found in the status review report, but each demographic factor was ultimately assigned one of three qualitatively-described levels of risk: "very low or low risk," "medium risk," or "high risk" (Miller 2016). The information from this demographic risk analysis in conjunction with the available information on threats (summarized below) was interpreted using professional judgement to determine an overall risk of extinction for *S. zygaena.* Because species-specific information is insufficient, a reliable, quantitative model of extinction risk could not be conducted as this time. The qualitative reference levels of "low risk," "moderate risk" and "high risk" were used to describe the overall assessment of extinction risk, with detailed definitions of these risk levels found in the status review report (Miller 2016).

Evaluation of Demographic Risks

Abundance

Current and accurate abundance estimates are unavailable for the smooth hammerhead shark. With respect to general trends in population abundance, multiple studies indicate that smooth hammerhead sharks may have experienced population declines over the past few decades, although these studies suffer from very low sample sizes and a lack of reliable data due to the scarcity of the smooth hammerhead sharks in the fisheries data. Catch records also generally fail to differentiate between the *Sphyrna* species. As such, many of the available studies examining abundance trends have, instead, looked at the entire hammerhead shark complex (scalloped, smooth, and great hammerhead sharks combined). However, attributing the observed declines from these studies to the smooth hammerhead shark population could be erroneous, especially given the distribution and proportion of *S. zygaena* compared to other hammerhead species. As smooth hammerhead sharks tend to occur more frequently in temperate waters compared to other *Sphyrna* species, they are likely to be impacted by different fisheries, which may explain the large differences in the proportions that *S. zygaena* comprise in the available commercial and artisanal "hammerhead" catch. In fact, based on the available information (discussed in more detail in the section *Overutilization for Commercial, Recreational, Scientific or Educational Purposes*), the proportion of smooth hammerhead sharks compared to the other hammerhead species in the fisheries data ranges from <1 percent to 100 percent, depending on the region, location, and timing of the fishing operations. As such, using other *Sphyrna* spp. abundance indices estimated from fisheries data to describe the status of *S. zygaena* is likely highly inaccurate. Therefore, we gave greater weight to the available abundance data that could explicitly or reasonably be attributed to smooth hammerhead sharks in our evaluation of the level of risk posed by current abundance.

Unlike the scalloped hammerhead shark, and to a lesser extent, the great hammerhead shark, NMFS fishery scientists note that there are hardly any data for smooth hammerhead sharks, particularly in U.S. Atlantic waters (personal communication J. Carlson). Hayes (2007) remarks that the species rarely occurs throughout the majority of U.S. Atlantic waters, and is thought to be less abundant than scalloped or great hammerhead sharks. Due to these data deficiencies, no official stock assessment has been conducted (or accepted) by NMFS for the species in this region. However, two preliminary species-specific stock assessments of the U.S. Atlantic smooth hammerhead shark population (Hayes 2007; Jiao *et al.* 2011) were available for review. These stock assessments used surplus-production models, which are common for dealing with data-poor species, and are useful when only catch and relative abundance data are available (Hayes *et al.* 2009). Given the limited amount and low quality of available data on smooth hammerhead sharks in the U.S. Northwest Atlantic, the only CPUE dataset with sufficient sample size that could be used as an index of relative abundance for these stock assessments was the U.S. Pelagic Longline (PLL) Logbook dataset. Results from the Hayes (2007) stock assessment estimated a virgin population size of smooth hammerhead sharks to be anywhere between 51,000 and 71,000 individuals in 1982 and a population size in 2005 of around 5,200 individuals. While these estimates translate to a decline of around 91 percent in abundance, based on the modeled trajectory in the stock assessment (Hayes 2007), abundance appears to have stabilized in recent years. In fact, the Jiao *et al.* (2011) stock assessment model indicated that after 2001, the risk of overfishing of the species was very low. It is important to note, though, that the abundance estimates from these stock assessments are very crude, hampered by significant uncertainty and based on a single index that may not adequately sample coastal sharks.

Within the Mediterranean region, rough estimates of the declines in abundance and biomass of smooth hammerhead sharks range from 96 to 99 percent (Celona and Maddalena 2005; Ferretti *et al.* 2008). Similar to the previous studies, these findings are hindered by a lack of reliable data and sufficient sample sizes. Yet, despite the uncertainty in magnitude of decline, Celona and de Maddalena (2005) provide a detailed review of historical and recent anecdotal accounts and catch records from select areas off Sicily that indicate a strong likelihood that smooth hammerheads have been fished to the point where they are now extremely rare. Additionally, information from the Mediterranean Large Elasmobranchs Monitoring (MEDLAM) program, as well as data from more expansive sampling of Mediterranean fleets operating throughout the region, also indicate a species that is presently only sporadically recorded (Megalofonou *et al.* 2005; Baino *et al.* 2012). Given the extent of the observed decline and evidence of the current rarity of the species, current abundance levels within this region are likely placing the species at a high risk of extirpation in the Mediterranean from anthropogenic perturbations.

In the Indian Ocean, data on trends in smooth hammerhead shark abundance are available from only two studies conducted in waters off South Africa. As such, the results are not likely indicative of the status of the species throughout this region. Furthermore, based on the findings from the two studies, the trend in the species' abundance within South African waters is unclear. For example, one study, which consisted of a 25-year tagging survey (conducted from 1984–2009) off the eastern coast of South Africa, concluded that the abundance of smooth hammerhead sharks (based on their availability for tagging) peaked in 1987 (n=468 tagged) and declined thereafter (Diemer *et al.* 2011). In contrast, a 25-year time series of annual CPUE of smooth hammerhead sharks in beach protective nets set off the KwaZulu-Natal beaches showed no significant trend, with the authors finding no evidence of a change in the mean or median size of *S. zygaena* in the nets over the time period (1978–2003) (Dudley and Simpfendorfer 2006).

Off New South Wales (NSW), Australia, CPUE data from a shark meshing (bather protection) program was lumped for a hammerhead complex (scalloped, smooth, and great hammerhead sharks), although the majority of the hammerhead catch was assumed to comprise *S. zygaena* given the species' tolerance of temperate waters (Reid and Krogh 1992; Reid *et al.* 2011; Williamson 2011). The data indicate that hammerhead sharks may have declined by around 85 percent over the past 35 years (Reid *et al.* 2011); however, changes in the methods and level of effort of the program since its inception have complicated these long-term analyses. Since 2009, annual catches of smooth hammerhead sharks in the nets have remained fairly stable.

Overall, with only a few regional studies providing limited information on the present abundance of the smooth hammerhead shark, the magnitude of declines and the current global abundance of the smooth hammerhead shark remains unclear. While the species may be at higher risk of extirpation in the Mediterranean, elsewhere throughout its range, trends and estimates in abundance do not indicate that the species' global abundance is so low, or variability so high, that it is at risk of global extinction due to environmental variation, anthropogenic perturbations, or depensatory processes, now or in the foreseeable future. In fact, many of the available regional studies suggest potentially stable populations. We therefore conclude that, at this time, the best available information on current abundance and trends indicates a low demographic risk to the species.

Growth Rate/Productivity

Sharks, in general, have lower reproductive and growth rates compared to bony fishes; however, smooth hammerhead sharks exhibit life-history traits and population parameters that place the species towards the faster growing end along a spectrum of shark species (Cortés 2002, Appendix 2). Cortés *et al.* (2012) found that the smooth hammerhead shark ranked among the most productive species when compared to 20 other species of sharks. Based on the estimate of its intrinsic rate of population increase (r=0.225), smooth hammerhead sharks can be characterized as having "medium" productivity (Musick 1999) with moderate resilience to exploitation. Given the available information, with no evidence of declining population trends, it is unlikely that the species' average productivity is below replacement to the point where the species is at risk of extinction from low abundance. Additionally, the limited amount of information on the demography and reproductive traits of the smooth hammerhead shark throughout its range precludes identification of any shifts or trends in per capita growth rate. As such, we conclude that, at this time, the best available information on growth rate/productivity indicates a low demographic risk to the species.

Spatial Structure/Connectivity

The smooth hammerhead shark range is comprised of open ocean environments occurring over broad geographic ranges. There is very little information on specific habitat (or patches) used by smooth hammerhead sharks. For example, habitat deemed necessary for important life history functions, such as spawning, breeding, feeding, and growth to maturity, is currently unknown for this species. Although potential nursery areas for the species have been identified in portions of its range, there is no information that these areas are at risk of destruction or directly impacting the extinction risk of smooth hammerhead populations.

Although dispersal rates for the species are currently unknown, there is no reason to believe that they are low within the range of *S. zygaena*. While the available data suggest a potentially patchy distribution for the species, given the relative absence of physical barriers within their marine environments (compared with terrestrial or river systems) and the shark's highly migratory nature (with tracking studies that indicate its ability to move long distances), it is unlikely that insufficient genetic exchange or an inability to find and exploit available resource patches are risks to the species. It is also unknown if there are source-sink dynamics at work that may affect population growth or species' decline. Thus, there is insufficient information that would support the conclusion that spatial structure and connectivity pose significant risks to this species. As such, we conclude that, at this time, the best available information on spatial structure/connectivity indicates a very low demographic risk to the species.

Diversity

There is no evidence that the species is at risk due to a substantial change or loss of variation in genetic characteristics or gene flow among populations. Smooth hammerhead sharks are found in a broad range of habitats and appear to be well-adapted and opportunistic. There are no restrictions to the species' ability to disperse and contribute to gene flow throughout its range, nor is there evidence of a substantial change or loss of variation in life-history traits, population demography, morphology, behavior, or genetic characteristics. There is also no information to suggest that natural processes that cause ecological variation have been significantly altered to the point where the species is at risk. As such, we conclude that, at this time, the best available information on diversity indicates a very low demographic risk to the species.

Summary of Factors Affecting the Smooth Hammerhead Shark

As described above, section 4(a)(1) of the ESA and NMFS implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; or other natural or man-made factors affecting its continued existence. We evaluated whether and the extent to which each of the foregoing factors contribute to the overall extinction risk of the global smooth hammerhead population, with "significant" defined as increasing the risk to such a degree that affects the species' demographics (*i.e.*, abundance, productivity, spatial structure, diversity) either to the point where the species is strongly influenced by stochastic or depensatory processes or is on a trajectory toward this point. This section briefly summarizes our findings and conclusions regarding threats to the smooth hammerhead shark and their impact on the overall extinction risk of the species. More details can be found in the status review report (Miller 2016).

The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Currently, smooth hammerhead sharks are found worldwide, residing in temperate to tropical seas. While the exact extent of the species' global range is not well known, based on the best available data, there does not appear to be any indication of a curtailment of range due to habitat destruction or modification. In the Mediterranean (specifically the Adriatic, Tyrrhenian, Ligurian, and Ionian Seas, Strait of Sicily, and Spanish Mediterranean waters) the species was previously thought to be "functionally extinct" based on the absence of the species in records after 1995 (as noted in Ferretti *et al.* 2008); however, recent studies provide evidence of the species' continued existence in this portion of its range, specifically within the Ionian and Tyrrhenian Seas and Strait of Sicily (Celona and de Maddalena 2005; Sperone *et al.* 2012). As such, we do not find this to be an indication of a curtailment of the species' range.

Additionally, there is very little information on habitat utilization of smooth hammerhead sharks. Because the smooth hammerhead range is comprised of open ocean environments occurring over broad geographic ranges, large-scale impacts such as global climate change that affect ocean temperatures, currents, and potentially food chain dynamics, may pose a threat to this species. Although studies on the impacts of climate change specific to smooth hammerhead sharks have not been conducted, results from a recent vulnerability assessment of Australia's Great Barrier Reef shark and ray species to climate change indicate that the closely related great and scalloped hammerhead sharks have a low overall vulnerability to climate change (Chin *et al.* 2010). These findings were, in part, based on the species' low vulnerabilities to each of the assessed climate change factors (*i.e.*, water and air temperature, ocean acidification, freshwater input, ocean circulation, sea level rise, severe weather, light, and ultraviolet (UV) radiation) (Chin *et al.* 2010). While this is a very broad analysis of potential climate change impacts on hammerhead species, no further information specific to the direct effects of climate change on *S. zygaena* populations could be found. Furthermore, given the highly migratory and opportunistic behavior of the smooth hammerhead shark, these sharks likely have the ability to shift their range or distribution to remain in an environment conducive to their physiological and ecological needs, providing the species with some resilience to the effects of climate change. Therefore, while climate change has the potential to pose a threat to sharks in general, including through changes in currents and ocean circulation and potential impacts to prey species, there is presently no information to suggest climate change is a significant threat negatively affecting the status of the smooth hammerhead shark or its habitat.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

In general, there is very little information on the historical abundance, catch, and trends of smooth hammerhead sharks, with only occasional mentions in fisheries records. Although more countries and regional fisheries management organizations (RFMOs) are working towards improving reporting of species-specific data, catches of hammerhead sharks have gone and continue to go unrecorded in many countries outside the United States. Much of the available data on the exploitation of the smooth hammerhead shark come primarily from localized study sites and over small periods of time; thus, it is difficult to extrapolate this information to the global population. Further complicating the analysis is the fact that data are often aggregated for the entire hammerhead complex. As stated previously, to use a hammerhead complex or other hammerhead species as a proxy for estimates of smooth hammerhead utilization and abundance could be erroneous, especially given the more temperate distribution and generally smaller proportion of *S. zygaena* in the fisheries catch compared to other hammerhead species. Therefore, more weight is given to the analyses of the available species-specific fisheries information compared to hammerhead complex data in determining whether overutilization is a significant threat to the species.

Smooth hammerhead sharks are both targeted and taken as bycatch in many global fisheries by a variety of gear types, including: Pelagic and bottom longlines, handlines, gillnets, purse seines, and pelagic and bottom trawls. They are valued for their large, high-quality fins for use in shark fin soup (Abercrombie *et al.* 2005; Clarke *et al.* 2006a). Additionally, smooth hammerhead sharks exhibit high mortality rates after being caught in fishing gear such as longlines and nets. In fact, estimates of mortality rates range from 47 to 71 percent in longline fishing gear and 94 to 98 percent in net gear (Cliff and Dudley 1992; Kotas *et al.* 2000; Braccini *et al.* 2012; Coelho *et al.* 2012; Fernandez-Carvalho *et al.* 2015). As such, we considered the impact of historical and current catch and bycatch levels (taking into account the species' high mortality rate on fishing gear and the effects of the shark fin trade) on the species' status to evaluate the threat of overutilization to the species. Due to the lack of global estimates and the above data limitations, the available information, including species-specific fishery data, is presented below by regions to better inform a global analysis.

In the northwestern Atlantic, smooth hammerhead sharks are mainly caught, albeit rarely, as bycatch in the U.S. Highly Migratory Species (HMS) commercial longline and net fisheries, and by U.S. recreational fishermen using rod and reel. Their rare occurrence in the fisheries data is likely a reflection of the low abundance of the species in this region (Hayes 2007; NMFS 2015a). As mentioned previously, two preliminary species-specific stock assessments examined the effect of U.S. commercial and recreational fishing on the species' abundance in the northwest Atlantic (Hayes 2007; Jiao *et al.* 2011). These stock assessments drew conclusions about the status of the stock (*e.g.*, "overfished" or "experiencing overfishing") in relation to the fishery management terms defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), such as "maximum sustainable yield" (MSY). These statuses, which provide information for determining the sustainability of a fishery, are based on different criteria than those under the ESA, which relate directly to the likelihood of extinction of the species. In other words, the status under MSA does not necessarily have any relationship to a species' extinction risk.

For example, a species could be harvested at levels above MSY but which do not pose a risk of extinction. As such, the analysis of the results from these stock assessments were considered in conjunction with available catch and bycatch trends, abundance, biological information, and other fisheries data in evaluating whether overutilization is a threat to the species.

For the stock assessment models, the limited amount and low quality of available data on smooth hammerhead sharks allowed for the input of only one index of relative abundance (the U.S. Atlantic PLL dataset) into the models. Catch time series data for the models included recreational catches, commercial landings, and pelagic longline discards. Based on these data, both assessments found significant catches of smooth hammerhead sharks in the early 1980s. Although these catches were over two orders of magnitude larger than the smallest catches, Hayes (2007) suggested that these large catches, which correspond mostly to the NMFS Marine Recreational Fishery Statistics Survey (MRFSS), are likely overestimated. Hayes (2007) also identified other data deficiencies that add to the uncertainty surrounding these catch estimates, including: Misreporting of the species, particularly in recreational fisheries, leading to overestimates of catches; underreporting of commercial catches in early years; and unavailable discard estimates for the pelagic longline fishery for the period of 1982–1986.

Results from the stock assessments indicated that the northwest Atlantic smooth hammerhead shark population declined significantly from virgin levels (by up to 91 percent; Hayes 2007), which was likely a consequence of fishery-related mortality exacerbated by the species' vulnerable life history. Although modeled fishing mortality rates were variable over the years, both assessments found a high degree of overfishing during the mid-1990s for smooth hammerhead sharks that likely led to the decline in the population. Towards the end of the modeled time series, however, Hayes (2007) noted that the stock assessment was highly sensitive to the inclusion of pelagic discards for the determination of whether the stock was experiencing overfishing in 2005. The Jiao *et al.* (2011) stock assessment model indicated that after 2001, the risk of overfishing was very low and that the smooth hammerhead population was still overfished but no longer experiencing overfishing. Additionally, the modeled trajectory of abundance appears to depict a depleted but stable population since the early 2000s (Hayes 2007). It is important to note, however, that both studies point out the high degree of uncertainty associated with these stock assessment models, with Jiao *et al.* (2011) warning that the stock assessment model should be "viewed as illustrative rather than as conclusive evidence of their [*S. zygaena*] present status," and Hayes (2007) noting that the "Questionable data give us little confidence in the magnitude of the results."

Since 2005 (the last year of data included in the stock assessment models), smooth hammerhead shark catches have remained low, and additional regulatory and management measures have been implemented that significantly decrease any remaining risk of overutilization of the species. For example, in the U.S. bottom longline fishery, which is the primary commercial gear employed for targeting large coastal sharks, *S. zygaena* continues to be a rare occurrence in both the shark catch and bycatch. Based on data from the NMFS shark bottom longline observer program, between 2005 and 2014, only 6 smooth hammerhead sharks were observed caught by bottom longline vessels fishing in the Gulf of Mexico and South Atlantic (data from 214 observed vessels, 833 trips, and 3,032 hauls; see NMFS Reports available at *http://www.sefsc.noaa.gov/labs/panama/ob/bottomlineobserver.htm*). In the pelagic longline fisheries, starting in 2011, the United States prohibited retaining, transshipping, landing, storing, or selling hammerhead sharks in the family Sphyrnidae (except for *Sphyrna tiburo*) caught in association with International Commission for the Conservation of Atlantic Tunas (ICCAT) fisheries (consistent with ICCAT Recommendations 09–07, 10–07, 10–08, and 11–08). During 2012 and 2014, no smooth hammerhead sharks were reported caught by pelagic longline vessels, and in 2013, only one was reported caught and subsequently released alive (NMFS 2013a; NMFS 2014b).

Presently, harvest of the species is managed under the 2006 Consolidated HMS Fishery Management Plan (FMP). With the passage of Amendment 5a to this FMP, which was finalized on July 3, 2013 (78 FR 40318), management measures have been implemented in the U.S. Federal Atlantic HMS fisheries that will help decrease fishery-related mortality of the species. These measures include separating the commercial hammerhead quotas (which includes great, scalloped, and smooth hammerhead sharks) from the large coastal shark (LCS) complex quotas, and linking the Atlantic hammerhead shark quota to the Atlantic aggregated LCS quotas, and the Gulf of Mexico hammerhead shark quota to the Gulf of Mexico aggregated LCS quotas. In other words, if either the aggregated LCS or hammerhead quota is reached, then both the aggregated LCS and hammerhead management groups will close. These quota linkages were implemented as an additional conservation benefit for the hammerhead shark complex due to the concern of hammerhead bycatch and additional mortality from fishermen targeting other sharks within the LCS complex. Furthermore, the separation of the hammerhead species from other sharks within the LCS management unit for quota monitoring purposes will allow NMFS to better manage the specific utilization of the hammerhead complex.

Since these management measures have been in place, landings of hammerhead sharks have decreased significantly. In fact, in 2013, only 49 percent of the Atlantic hammerhead shark quota was reached due to the closure of the Atlantic aggregated LCS group. In 2014, the Atlantic LCS quota was reached when only 46 percent of the Atlantic hammerhead quota had been caught. Most recently, in 2015, only 66 percent of the Atlantic hammerhead quota was caught. In other words, due to existing regulatory measures, the mortality of hammerhead sharks from both targeted fishing and bycatch mortality on fishing gear for other LCS species appears to have been significantly reduced, with current levels unlikely to lead to overutilization of the species.

In the southwest Atlantic, hammerhead sharks are susceptible to being caught by the artisanal, industrial, and recreational fisheries operating off the coast of Brazil and Uruguay. However, the impact of these fisheries specifically on smooth hammerhead sharks remains unclear as the available landings data from this region, which tend to be lumped for all hammerhead species (*Sphyrna* spp.), have fluctuated over the years (Vooren and Klippel 2005). Additionally, when species-specific fisheries information is available, the data indicate that *S. lewini* tend to comprise the majority of the hammerhead shark catch.

According to Vooren and Klippel (2005), the majority of the hammerhead catch off Brazil is caught by the oceanic drift gillnet fleet, which operates on the outer shelf and slope between 27 °S. and 35 °S. latitudes. For example, in 2002, total hammerhead landings from all Brazilian fisheries totaled 356 t, with 92 percent of the landings attributed to the gillnet fleet. However, similar to the findings from the northwest Atlantic, the available species-specific fisheries data indicate that smooth hammerhead sharks comprise a very small proportion of the hammerhead catch from these fisheries, with estimates of around <1 – 5 percent (Sadowsky 1965; Vooren and Klippel 2005).

Although not as frequent as in the oceanic gillnet fisheries, catches of smooth hammerhead sharks are also observed in the longline fisheries operating in the shelf and oceanic waters off southern Brazil and Uruguay. Based on results from a study that examined shark catches from five São Paulo State surface longliners, smooth hammerhead sharks may actually comprise a larger proportion of the longline hammerhead catch in this region (Amorim *et al.* 2011). Over the course of 27 fishing trips from 2007–2008, a total of 376 smooth and scalloped hammerheads were caught, with smooth hammerhead sharks comprising 65 percent of this catch (n=245 *S. zygaena*). Life stages of 30 male smooth hammerhead sharks were ascertained, with the large majority (n=20) constituting juveniles; however, the longliners also caught 10 adults, primarily during fishing operations in depths of 200 m–3,000 m (Amorim *et al.* 2011). In total, hammerhead sharks comprised 6.3 percent of the shark total by weight, at 37.7 t, which is similar to the range of yields reported by Silveira (2007) in Amorim *et al.* (2011), with estimates from 9 t (in 2002) to 55 t (in 2005).

In the Brazilian artisanal net fisheries, smooth hammerhead sharks are caught in beach seines, cable nets, and gillnets, which are deployed off beaches in depths of up to 30 m. Given the area of operation (*e.g.,* closer to shore, in shallower waters), hammerhead catches from these artisanal fishing operations consist mainly of juveniles of both *S. lewini* and *S. zygaena,* but generally with higher proportions of *S. lewini.* For example, from November 2002 to March 2003, Vooren and Klippel (2005) monitored artisanal fish catches off a stretch of beach between Chui and Tramandai and recorded a total of 218 hammerhead sharks, with only 4 (or 1.8 percent) identified as smooth hammerhead sharks. Artisanal fishermen operating near Solitude Lighthouse (30°42′ S) also reported a fish haul of 120 kg of newborn hammerhead sharks, with around 180 scalloped hammerheads and only 2 smooth hammerhead sharks (or 1 percent of the hammerhead catch) (Vooren and Klippel 2005). Off Parana, Bornatowski *et al.* (2014) documented 77 juveniles of *S. zygaena* (with sizes ranging from 67.1–185 cm TL) and 123 scalloped hammerhead sharks in the artisanal gillnet fish catch over a 2-year period.

Based on the available information, it is clear that all life stages of the smooth hammerhead shark are susceptible to the fisheries operating in the southwest Atlantic. However, the degree to which these fisheries are contributing to overutilization of the species is highly uncertain. Furthermore, analysis of the available CPUE data from this region as a reflection of abundance does not indicate any trends that would suggest the smooth hammerhead shark is at an increased risk of extinction. The available hammerhead CPUE data (for *S. lewini* and *S. zygaena* combined) from the oceanic gillnet fishery (the fishery that catches the majority of hammerhead sharks), show a variable trend over the period of 1992 to 2004. From 1992 to 1997, CPUE decreased from 0.28 (t/trip) to 0.05 (t/trip), and then increased to 0.25 (t/trip) by 2002. Similarly, there was no discernible trend in the recreational fisheries CPUE data for hammerhead sharks for the period covering 1999 to 2004 (Vooren and Klippel 2005). The CPUE of the longline fisheries was also variable, increasing from 0.02 (t/trip) in 1993 to 0.87 (t/trip) in 2000 and then decreasing to 0.02 (t/trip) in 2002 (Vooren and Klippel 2005). However, according to personal communication from the authors (Vooren and Klippel), cited in Food and Agriculture Organization of the United Nations (FAO) (2010), the effort data used to estimate CPUE did not account for changes in the size of gillnets or number of hooks in the longline fisheries. Given these results, and noting that smooth hammerhead sharks, while being primarily juveniles, generally tend to be harvested at low levels, with no evidence of impacts to recruitment, the available species-specific information does not indicate that overutilization is a significant threat presently contributing to the species' risk of extinction in this region.

In the northeast and central Atlantic, smooth hammerhead sharks are caught primarily by the artisanal and industrial fisheries operating throughout the region. Additionally, many of these hammerheads are also juveniles, which could have serious implications on the future recruitment of hammerhead sharks to the population (Zeeberg *et al.* 2006; Dia *et al.* 2012). For example, in a sample of the Spanish longline fleet landings at the Algeciras fish market (the largest fish market in southwestern Spain), Buencuerpo *et al.* (1998) observed that the average sizes of *S. zygaena* were 170 cm TL for females and 150 cm TL for males, indicating a tendency for these fisheries to catch immature individuals. Similarly, Portuguese longliners targeting swordfish in the eastern equatorial Atlantic were also observed catching smooth hammerhead sharks that were smaller than the estimated sizes at maturity. Between August 2008 and December 2011, Coelho *et al.* (2012) reported that the average length for captured smooth hammerheads (n=372) was 197.5 cm fork length (FL) (220 cm TL) (Coelho *et al.* 2012), which falls within the range of maturity size estimates for the species, but indicates that both adults and immature smooth hammerhead sharks are being caught. However, the impact of this level of juvenile catch on the smooth hammerhead shark population is largely unknown due to a lack of information on *S. zygaena* population size, CPUE trend data, or other time-series information that could provide insight into smooth hammerhead shark recruitment and population dynamics.

Off the west coast of Africa, fisheries data are severely lacking, particularly species-specific data. While the available information suggests there has been a significant decline in the overall abundance of shark species due to heavy exploitation of sharks in the 1990s and 2000s for the international fin trade market, the impact of this past utilization, and current levels, on the smooth hammerhead shark population are unclear. There is evidence that hammerhead sharks faced targeted exploitation by the Senegalese and Gambian fisheries (Diop and Dossa 2011), but in terms of available hammerhead-specific information from this region, the data show variable trends in catch or abundance over the past decade. For example, data from Senegal's annual Marine Fisheries Reports depict fairly stable landings in recent years, but with peak highs of around 1,800 mt in 2006 and most recently in 2014 (Republique du Senegal 2000–2014). Seemingly in contrast, in Mauritanian waters, scientific research survey data collected from 1982–2010 indicate that the abundance of *Sphyrna* spp. (identified as *S. lewini* and *S. zygaena*) has sharply declined, particularly since 2005, with virtually no *Sphyrna* spp. caught in 2010 (Dia *et al.* 2012). However, similar to the findings from the other areas in the Atlantic, scalloped hammerhead sharks appear to be the more common hammerhead shark in this region, comprising the majority of the hammerhead catches and likely influencing the trends observed in the hammerhead data. For example, in 2009, Dia *et al.* (2012) reported that the total catches of sharks in Mauritanian waters amounted to 2,010 mt, with total hammerhead landings of 221 mt. Smooth hammerheads constituted only 1.76 percent of the total shark catch (or 35 mt) and 16 percent of the hammerhead total (Dia *et al.* 2012). Similarly, based on data from 246 fishery surveys spanning the years from 1962 to 2002 and conducted along the west coast of Africa (from Mauritania to Guinea, including Cape Verde), scalloped hammerheads occurred more frequently and in higher numbers in the observed catch. In fact, the greatest number of smooth hammerhead sharks observed during any single survey year was 12 individuals, recorded in 1991, whereas the scalloped hammerhead shark saw a peak of 80 individuals, recorded in 1993 (see Miller 2016 for more details). Overall, without additional information on present abundance levels, distribution information, or catch and overall utilization rates of the smooth hammerhead shark in this region, conclusions regarding the impact of current fishing pressure specifically on the extinction risk of the species would be highly uncertain and speculative.

In the temperate waters of the Mediterranean Sea, smooth hammerhead sharks have been fished for over a century, and have consequently suffered significant declines in abundance in this region. In the early 20th century, coastal fisheries would target large sharks and also land them as incidental bycatch in gill nets, fish traps, and tuna traps (Feretti *et al.* 2008). Feretti *et al.* (2008) hypothesized that certain species, including *S. zygaena,* found refuge in offshore pelagic waters from this intense coastal fishing. However, with the expansion of the tuna and swordfish longline and drift net fisheries into pelagic waters in the 1970s, these offshore areas no longer served as protection from fisheries, and sharks again became regular bycatch. Consequently, Feretti *et al.* (2008) estimate that the hammerhead shark abundance in the Mediterranean Sea (primarily *S. zygaena*) declined by more than 99 percent over the past 107 years, with the authors considering hammerhead sharks to be functionally extinct in the region. Although these specific estimates are highly uncertain, hindered by a lack of reliable species-specific data and small sample sizes, they indicate a potentially serious decline in the population of hammerhead sharks within the Mediterranean that is further confirmed by findings from Celona and de Maddalena (2005) and fishery surveys conducted throughout the Mediterranean (Megalofonou *et al.* 2005; Baino *et al.* 2012).

Specifically, Celona and de Maddalena (2005) reviewed historical and more recent data (through 2004) on hammerhead shark (likely *S. zygaena*) occurrence from select areas off Sicily and found that smooth hammerhead sharks have been fished to the point where they are now extremely rare. Historically, there were no regulations or management of the hammerhead shark fishery in Italy. When captured, these sharks were usually retained and sold, fresh and frozen, for human consumption. In the 1970s, when a specific hammerhead fishery existed off Sicily, and these sharks were caught in large numbers, their price even climbed to around 30 percent of swordfish prices (Celona and de Maddalena 2005). The high value and demand for the species, in combination with the lack of any regulations to control the fishery, led to significant overutilization of the species in Sicilian waters. In the Messina Strait, for example, hammerhead sharks were historically caught throughout the year and observed in schools, especially when bullet tuna schools (*Auxis rochei rochei*) were present in these waters. Hammerhead sharks were also historically common in waters off Palermo. Based on data from the most important landing site for the area, Portciello di Santa Flavia, around 300–400 sharks were caught per year as bycatch in driftnets targeting swordfish, and around 50 hammerhead sharks were caught annually in pelagic longlines. However, by the late 1970s, these sharks became noticeably less abundant, with only 1–2 sharks caught per year. Since 1998, no hammerhead sharks have been observed in the Messina Strait, and the last observed hammerhead shark in waters off Palermo was caught in 2004 (Celona and de Maddalena 2005). Similar findings were made on the west coast of Sicily, off Catania, and in waters around Lampedusa Island in the Sicilian Channel, where hammerhead sharks were once regularly caught by swordfish and tuna fishermen (in both nets and longlines), but presently are a rare occurrence. According to Celona and de Maddalena (2005), fishermen acknowledge the negative effect that the historical heavy fishing pressure and the extensive use of the drift net gear has had on the abundance of hammerhead sharks. The authors "roughly" estimate that captures of hammerhead shark have declined by at least 96–98 percent in the last 30 years as a result of overexploitation.

The disappearance of smooth hammerhead sharks is not just relegated to waters off Italy. In a sampling of fleets targeting swordfish and tuna throughout the Mediterranean from 1998 to 2000, only 4 smooth hammerhead sharks were observed based on data from 5,124 landing sites and 702 fishing days (onboard commercial fishing vessels) (Megalofonou *et al.* 2005). Similarly, the MEDLAM program, which was designed to monitor the captures and sightings of large cartilaginous fishes occurring in the Mediterranean Sea, also has very few records of *S. zygaena* in its database. Since its inception in 1985, the program has collected around 1,866 records (including historical records) of more than 2,000 specimens from 20 participating countries. Out of the 2,048 elasmobranchs documented in the database through 2012, there are records identifying only 17 individuals of *S. zygaena* [note: Without access to the database, the dates of these observations are unknown] (Baino *et al.* 2012).

Recently, Sperone *et al.* (2012) provided evidence of the contemporary occurrence of the smooth hammerhead shark in Mediterranean waters, recording 7 individuals over the course of 9 years (from 2000–2009) near the Calabria region of Italy. Previous findings by Ferretti *et al.* (2008) indicated the species was likely extirpated from this area based on Ionian longline data from 1995 to 1999. Although Sperone *et al.* (2012) suggest these new findings may indicate the potential recovery of smooth hammerhead shark populations in Ionian waters off Calabria, Italy, the populations in the Mediterranean are still significantly depleted. Any additional fishing mortality on these existing populations is likely to significantly contribute to its risk of extirpation in the Mediterranean. Given the large fishing fleet in the Mediterranean, this likelihood remains high. In fact, in 2012, the European Commission (2014) reported a Mediterranean fleet size of 76,023 vessels, with a total fishing capacity of 1,578,015 gross tonnage and 5,807,827 kilowatt power. As of January 2016, the General Fisheries Commission for the Mediterranean (GFCM) identified 9,343 large fishing vessels (*i.e.,* larger than 15 meters) as authorized to fish in the GFCM convention area (which includes Mediterranean waters and the Black Sea). Of these vessels, 12 percent (or 1,086 vessels) reported using longlines or nets (drift nets, gillnets, trammel nets) as their main fishing gear (see *http://www.gfcmonline.org/data/avl/*). While the GFCM passed Recommendation GFCM/35/2011/7 (C), based on the ICCAT recommendation 10–08, prohibiting the onboard retention, transshipment, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family Sphyrnidae (except for the *S. tiburo*) taken in the Convention area, as noted previously, the smooth hammerhead exhibits high rates of at-vessel mortality. Given the extremely depleted status of the species, it is therefore unlikely that this regulation will significantly decrease the fishery-related mortality of the smooth hammerhead shark to the point where it is no longer at significant risk of further declines and potential extirpation from overutilization in the Mediterranean.

In the southeastern Atlantic, hammerhead sharks (likely primarily *S. zygaena* given the more temperate waters of this region) have also been reported caught by commercial and artisanal fisheries operating off Angola, Namibia and the west coast of South Africa. However, within the Benguela Current Large Marine Ecosystem (defined as west of 20° E. longitude, north of 35° S. latitude and south of 5º S. latitude.) Petersen *et al.* (2007) found that hammerhead sharks were only a minor component of the shark bycatch. Based on reported observer data from the Namibian longline fisheries, hammerhead sharks comprised only 0.2 percent of the total shark bycatch from 2002–2004, with a very low catch rate of 0.2 sharks/1000 hooks (Petersen *et al.* 2007). Hammerhead sharks were also rarely caught by the South African pelagic longline fishery, with only one identified hammerhead shark out of 10,435 sharks caught from 2000 to 2005 (Petersen *et al.* 2007). In the shark directed longline fishery off South Africa, hammerhead sharks also appear to comprise a small component of the catch (by number). Based on logsheet landings data from 1992–2005, as a group, hammerheads, copper sharks, cowsharks, threshers, and skates made up only 3 percent of the total number of sharks (Petersen *et al.* 2007). Additionally, local demand for smooth hammerhead sharks (particularly meat) does not appear to be a threat in these waters, with smooth hammerhead sharks generally relegated to the colloquial "bad" trade category due to the lower value of its flesh in South African markets (Da Silva and Burgener 2007).

The fisheries information and catch data for the entire Atlantic region from ICCAT also depict a species that is not regularly caught by industrial fishing vessels operating throughout the Atlantic Ocean. ICCAT is the RFMO responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. Smooth hammerhead sharks are taken in the ICCAT convention area by longlines, purse seine nets, gillnets, and handlines, with around 44 percent of the total catch from 1987–2014 caught by drift gillnet gear and 23 percent caught by longlines. In total, approximately 1,746 mt of smooth hammerhead catches were reported to ICCAT from 1987–2014.

In 2010, ICCAT adopted recommendation 10–08 prohibiting the retention onboard, transshipment, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family Sphyrnidae (except for *S. tiburo*) taken in the Convention area in association with ICCAT fisheries. However, there is an exception for developing coastal nations for local consumption as long as hammerheads do not enter into international trade. Despite this exception, analysis of available observer data from ICCAT fishing vessels shows that, in general, smooth hammerhead catches are fairly minimal in the industrial fisheries operating throughout the Atlantic. For example, data from French and Spanish observer programs, collected over the period of 2003–2007, show that smooth hammerhead sharks represented 3.5 percent of the shark bycatch (in numbers) in the European purse seine fishery (Amandè *et al.* 2010). This fishery primarily operates in latitudes between 20° N. and 20° S. and longitudes from 35° W. to the African coast. In total, only 12 smooth hammerhead sharks were caught on the 27 observed trips which corresponded to 598 sets (Amandè *et al.* 2010). Similarly, in the tropical Atlantic Ocean, fishery observers onboard two Chinese tuna longline vessels from December 2007 to April 2008 (covering 90 fishing days and 226,848 hooks) recorded only 7 smooth hammerhead sharks, making it the second least commonly encountered shark, with an average CPUE of 0.031 (number of sharks/1000 hooks) and comprising only 3 percent of the shark bycatch by weight and 1.1 percent by number (Dai *et al.* 2009).

Observer data from tuna longliners operating throughout the Atlantic Ocean also support the observed low likelihood of catching *S. zygaena* during normal fishing operations. From 1995–2000, Japanese observers collected data from 20 trips, covering 886 fishing operations and 2,026,049 deployed hooks throughout the Atlantic (Matsushita and Matsunaga 2002). A total of 9,921 sharks were observed; however, only 22 of these were smooth hammerhead sharks, comprising 0.2 percent of the total shark bycatch (Matsushita and Matsunaga 2002). Observers aboard Portuguese longline fishing vessels collected more recent data from 834 longline sets (1,078,200 deployed hooks) and conducted between August 2008 and December 2011 (Coelho *et al.* 2012). A total of 36,067 elasmobranchs were recorded over the course of the 3-year study, of which 372 (or roughly 1 percent) were smooth hammerhead sharks (Coelho *et al.* 2012).

Perhaps not surprising, given the above data on ICCAT longline catches, Cortés *et al.* (2012) conducted an Ecological Risk Assessment and concluded that smooth hammerheads were one of the least vulnerable stocks to overfishing by the ICCAT pelagic longline fisheries. Ecological Risk Assessments are popular modeling tools that take into account a stock's biological productivity (evaluated based on life history characteristics) and susceptibility to a fishery (evaluated based on availability of the species within the fishery's area of operation, encounterability, post capture mortality and selectivity of the gear) in order to determine its overall vulnerability to overexploitation (Cortés *et al.* 2012; Kiszka 2012). Results from the Cortés *et al.* (2012) Ecological Risk Assessment, which used observer information collected from a number of ICCAT fleets, indicate that smooth hammerhead sharks face a relatively low risk in ICCAT fisheries. In fact, based on the best available data from the Atlantic region, the evidence suggests that while smooth hammerhead sharks are caught as both targeted catch and bycatch, and then marketed for both their fins and meat, overall, the present level of utilization does not appear to be a threat significantly contributing to the species' risk of extinction.

In the Indian Ocean, smooth hammerhead sharks have historically been and continue to be caught as bycatch in pelagic longline tuna and swordfish fisheries and gillnet fisheries, and may also be targeted by semi-industrial, artisanal and recreational fisheries; however, fisheries data, particularly species-specific information, are severely lacking. Presently, there are very few studies that have examined the status of or collected data specifically on smooth hammerhead sharks in the Indian Ocean, making it difficult to determine the level of exploitation of this species within the ocean basin.

In the western Indian Ocean, where artisanal fisheries are highly active, studies conducted in waters off Madagascar and Kenya provide limited data on the catch and use of smooth hammerhead sharks from this region. For the most part, many of the fisheries operating throughout this region are poorly monitored, with catches largely undocumented and underestimated. For example, in southwest Madagascar, McVean *et al.* (2006) investigated the directed shark fisheries of two villages over the course of 10 and 13 months, respectively, and found that the scale of these fisheries was "largely unexpected." These fisheries, described as "traditional fisheries" (*i.e.,* fishing conducted on foot or in non-motorized vessels), used both surface-set longlines and also gillnets to catch sharks. Sharks are processed immediately after landing, with valuable fins exported to the Far East at high prices and shark meat sold locally. Out of the examined 1,164 catch records, hammerhead sharks (*Sphyrna* spp.; fishermen did not differentiate between species) were the most commonly caught shark (n = 340), comprising 29 percent of the total sharks caught and 24 percent of the total wet weight. Overall, the fisheries landed 123 mt of sharks, which was significantly higher than the previous annual estimate of 500 kg per km of Madagascar coastline. The data also provided evidence of declines in both the numbers of sharks landed and size (McVean *et al.* 2006). Due to the high economic returns associated with shark fishing in Madagascar, the authors predicted that these fisheries will likely continue despite the potential risks of resource depletion. However, without more accurate species-specific data, the effect of this level of exploitation, particularly on smooth hammerhead sharks, remains uncertain. In fact, in other areas of Madagascar, studies examining the artisanal and shark fisheries, including the genetic testing of fins from these fisheries, report hammerhead catches that consist mainly of scalloped hammerhead sharks and, to a lesser degree, great hammerhead sharks, but no smooth hammerhead sharks (Doukakis *et al.* 2011; Robinson and Sauer 2011).

In Kenya, however, there is evidence of smooth hammerhead sharks in the fish catch. Similar to the McVean *et al.* (2006) study, Kyalo and Stephen (2013) analyzed data from various landing sites along the coast of Kenya as well as observer data from commercial and scientific trawl surveys to examine the extent of shark catch in Kenya's artisanal tuna fisheries and semi-industrial prawn trawls. In Kenya, sharks are primarily caught as bycatch, with the meat consumed locally and fins exported to Far East countries (including Hong Kong and China). Based on data collected over a 1-year period (July 2012-July 2013), hammerhead sharks (*S. lewini* and *S. zygaena*) comprised 58.3 percent of the shark catch in the semi-industrial prawn trawl fisheries. Smooth hammerhead sharks, alone, made up 27 percent of the sharks (n=69), with a catch rate estimated at 2 kg/hour. Additionally, all of the smooth hammerheads were neonates, with the vast majority within the estimated size at birth range, indicating that the fishing grounds likely also serve as parturition and nursery grounds for the species. While it is particularly concerning that the Kenyan semi-industrial trawl fisheries are harvesting neonate and juvenile smooth hammerhead sharks, the degree to which this harvest is impacting recruitment of *S. zygaena* to the population is unknown. However, the authors do note that the general catch trend of elasmobranchs in Kenya has exhibited a declining trend since 1984, and suggest additional research is needed to determine current harvest rates and sustainable catch and effort levels.

While range maps place smooth hammerhead sharks within the Persian Gulf, there is no available information on the abundance or magnitude of catches of *S. zygaena* within this body of water. In the waters of the United Arab Emirates (UAE), hammerhead sharks are noted as generally "common" and are currently protected from being retained or landed. However, while the UAE prohibits the export of hammerheads caught in UAE waters, it still allows for the re-export of these sharks caught elsewhere (such as in Oman, Yemen, and Somalia) (Todorova 2014). In fact, in the past decade, the UAE has emerged as an important regional export hub for these countries in terms of the international shark fin trade, exporting up to 500 mt of dried raw fins annually to Hong Kong. Yet, information on the species traded and quantities involved is limited. Based on data collected from 2010–2012 at the Deira fish market (the only auction site in UAE for sharks destined for international trade), hammerheads were the second most represented family in the trade (at 9.3 percent) behind Carcharinidae sharks (which represented 74.9 percent of the species) (Jabado *et al.* 2015). A total of 12,069 sharks were recorded at the fish market, with the majority originating from Oman (Jabado *et al.* 2015). Around half (6,751 individuals) were identified to species, with 186 identified as *S. zygaena* caught in Oman waters (Jabado *et al.* 2015). Thus, while the UAE affords protections to hammerhead sharks within its own waters, its re-export business continues to drive the demand for the species throughout the region. However, while UAE traders confirmed that fins from hammerhead sharks are highly valued, they also note that the general trend in recent years has been a decline in prices and profits due to a reduction in demand for fins in Hong Kong (see Shark Fin Trade section for more details) (Jabado *et al.* 2015). As such, this decrease in demand may translate to a decrease in fishing pressure on the species. Yet, without any data on catch trends, fishing effort, or the size of the *S. zygaena* population in this region, the impact of current or even future fishing mortality rates on the smooth hammerhead population remains unknown.

In the central Indian Ocean, data on smooth hammerhead shark utilization is available from the countries of Sri Lanka, India, and Indonesia. In Sri Lanka, shark meat, both fresh and dried, is used for human consumption as well as for a cheap animal feed source, while shark fins are exported to other countries (SL–NPOA–Sharks 2013). Shark catches in Sri Lanka reached high levels in the 1980s, coinciding with demand for shark products in the international market, and peaked in 1999 at 34,842 mt (SL–NPOA–Sharks 2013). However, since 1999, annual shark catches have exhibited a significant decline, down to a low of 1,611 t in 2014 (Jayathilaka and Maldeniya 2015). According to Jayathilaka and Maldeniya (2015), the decline in annual shark production, particularly over the past few years, can be mainly attributed to the implementation and enforcement of new regulations on sharks and, specifically, conservation provisions for thresher sharks (which were one of the more dominant species in the shark catches). The authors further go on to state that the declining price of shark fins has also influenced fishermen to shift to export-oriented tuna fisheries. In terms of the impacts on smooth hammerhead sharks, when the data are broken out by shark species, hammerhead sharks have and continue to comprise a very small proportion of the catch. Based on landings data over the past decade (and similarly reported in historical catches), silky sharks tend to dominate the shark catch, followed by blue sharks, thresher sharks (until their prohibition in 2012), and oceanic whitetip sharks. In 2014, smooth hammerhead sharks comprised around only 1 percent of the retained shark bycatch in Sri Lanka, with a total of 18 mt caught (Hewapathirana *et al.* 2015; Jayathilaka and Maldeniya 2015). While sharks have generally declined in Sri Lankan waters due to historical overutilization, there is no information to indicate that present catch levels of *S. zygaena* are a significant threat to the species in this portion of its range.

Similarly, in Indian waters, available longline survey data collected from within the exclusive economic zone (EEZ) show that smooth hammerheads tend to comprise a small portion of the shark bycatch (0.5–5 percent) (Varghese *et al.* 2007; John and Varghese 2009). Although India is considered to be one of the top shark-fishing nations, smooth hammerhead sharks, in particular, are not considered to be a species of interest (based on 2008–2013 Indian Ocean Tuna Commission (IOTC) data holdings) (Clarke and IOTC Secretariat 2014). The same appears true for Indonesia, which is considered to be the largest shark-catching country in the world. In fact, the available landings and observer data suggest that *S. zygaena* distribution is not likely concentrated within Indonesian fishing areas. For example, in an analysis of data collected from Indonesian tuna longline fishing vessels from 2005–2013, scientific observers recorded only 6 smooth hammerheads (covering 94 trips, 2,268 operations, and 3,264,588 hooks) (Novianto *et al.* 2014). In another study, data were collected and analyzed from numerous fish markets and landing sites throughout Indonesia from 2001–2005, including Central Java, Bali, Jakarta, West Java, and Lombok. This study revealed that *Sphryna* spp. are among the most commonly taken shark species as bycatch; however, when identified to species, only *S. lewini* was detected within the landings data (Blaber *et al.* 2009). Similarly, a study that used DNA barcoding to identify shark fins from numerous traditional fish markets and shark-fin exporters across Indonesia (from mid-2012 to mid-2014) found a relatively high frequency of scalloped hammerhead sharks in the data (10.48 percent of fins; 2nd most common shark), whereas *S. zygaena*, while present in the fish markets, comprised only 1.03 percent of the fins (n=6 fins) (Sembiring *et al.* 2015). These results are not that surprising given the more temperate distribution of the smooth hammerhead shark compared to the tropical scalloped hammerhead. However, it also speaks to the threat of overutilization in that the largest shark-catching country in the world appears to primarily target sharks in tropical waters, so smooth hammerhead sharks may be provided some protection from these intensive fisheries due to their more temperate distribution.

Given the above information on distribution, it is not surprising that the majority of *S. zygaena* catches in Australian waters is attributed to the Western Australian temperate gillnet and longline fisheries, which operate in continental shelf waters along the southern and lower west coasts. The main commercial shark species targeted in these fisheries are gummy sharks (*Mustelus antarcticus*), dusky sharks (*Carcharhinus obscurus*), whiskery sharks (*Furgaleus macki*) and sandbar sharks (*Carcharhinus plumbeus*). Smooth hammerhead sharks are considered to be a bycatch species and tend to comprise over 98 percent of the hammerhead catch from this fishery (Australian Government 2014; Commonwealth of Australia 2015). A recent multi-fisheries bycatch assessment, which examined the sustainability of bycatch species in multiple Gascoyne and West Coast Australian fisheries, found smooth hammerhead sharks to be at a low to moderate risk in this region, with the risk largely influenced by the species' biological profiles (vulnerable life history traits) as opposed to fishery impacts (Evans and Molony 2010). Between 1994 and 1999, McAuley and Simpfendorfer (2003) estimated that the average annual take of smooth hammerheads in the Western Australian temperate gillnet and longline fisheries was around 53 t. Based on recent catches of hammerhead sharks (range: 59.9 t–71 t), harvest levels have increased slightly since the 1990s, but have remained fairly stable over the past 4 years. Furthermore, these harvest levels are considered to be within the recommended sustainable take for the species, which has been estimated at around 70 t per year (Australian Government 2014). An increasing CPUE trend specifically for hammerhead sharks in this fishery (Simpfendorfer 2014), as well as a declining trend in total gillnet effort (with effort on the west coast now at low historical levels) (Government of Western Australia 2015), suggests that the ongoing harvest of the species by the Western Australian temperate gillnet fisheries is unlikely to be a significant threat to the species.

Fisheries information and catch data from the RFMO that operates throughout the Indian Ocean (the IOTC) also depict a species that is not regularly caught by industrial fishing vessels (see Miller (2016) for more details), nor does this RFMO consider the species to be a key "priority species" (*i.e.*, those shark species whose status the IOTC is concerned about and have scheduled future stock assessments). While current catches reported in the IOTC public domain database are thought to be incomplete and largely underestimated (Murua *et al.* 2013; IOTC 2015), the available observer data from the IOTC convention area suggest that smooth hammerhead sharks tend to be rare in the various industrial and artisanal fisheries operating within the convention area (Huang and Liu 2010).

In the western Pacific, smooth hammerhead sharks are regularly recorded in fisheries catch data, particularly from the temperate waters off southeastern Australia and New Zealand. They have also been reported in landings data from Japan, as far north as Hokkaido (Taniuchi 1974). According to Taniuchi (1974), smooth hammerhead sharks were historically widely distributed throughout Japan, with their flesh sold at fish markets from Shikoku to the Kanto District and Hokkaido; however, species-specific data are lacking. Over the past decade, reported catches of hammerhead sharks at main fishing ports in Japan have been low and variable (range: <10 mt to <40 mt), with no clear trend (Fisheries Agency of Japan 2015). Furthermore, overall fishing effort by Japanese longliners (which are responsible for the majority of shark catches) has been on a declining trend since the late 1980s, with significant declines noted particularly in the Pacific Ocean (Fisheries Agency of Japan 2011; Uosaki *et al.* 2015), with expansion of the scale of these fisheries unlikely in the foreseeable future (Fisheries Agency of Japan 2011).

Although Japan is a significant producer and exporter of sharks fins, ranking 10th worldwide in terms of chondrichthyan catches and 11th in (dried) shark fin exports from 2000–2011, both capture production and fin exports have steadily declined over the past decade (Dent and Clarke 2015). Compared to statistics from 2000, Japan's catches of chondrichthyans decreased by 68 percent in 2011 and fin exports dropped by 52 percent in 2012. Additionally, Japan has stated that due to the uncertainty of the stock structure of hammerhead sharks, as well as the lumping of all hammerhead sharks in the available Japanese data, it is unable to make a CITES non-detriment finding for the export of hammerhead shark species (Fisheries Agency of Japan 2015). Effective September 14, 2014, scalloped, smooth, and great hammerhead sharks are listed on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which means that international trade in specimens of these species may be authorized by the granting of a CITES export permit or re-export certificate. However, under CITES, these permits or certificates should only be granted if that trade will not be detrimental to the survival of the species. This is done through the development of a "non-detriment" finding, or NDF. Because Japan is unable to make an NDF for the export of scalloped, smooth, or great hammerhead sharks, it will not issue any permits for the export of products from these species. This decision has likely significantly decreased the incentive for Japanese fishermen to target smooth hammerhead sharks for the international fin trade market, and has decreased the threat of overutilization of the species within Japanese waters.

Smooth hammerhead sharks are also documented in the fisheries catch data from Taiwan, whose fleet also ranks in the top ten for global shark catches. However, based on the available data, the species does not appear to be a significant component of the shark catch. For example, from 2002–2010, Liu and Tsai (2011) examined offloaded landings at two major fish markets in Taiwan (Nanfangao and Chengkung) to get a better sense of the catch composition and whole weight of the sharks commonly caught by Taiwanese offshore tuna longliners. What they found was that there are 11 species of pelagic sharks that are commonly caught by the longliners, with blue sharks dominating the shark landings (by weight), comprising an average of 44.5 percent of the landings, followed by scalloped hammerheads (at 9.87 percent) and shortfin makos (at 9.42 percent) (Liu and Tsai 2011). Smooth hammerhead sharks, on the other hand, were one of the least represented species, comprising an average of 1.38 percent of the landings over the study period, which translated to around 78 mt per year (Liu and Tsai 2011). Since 2010, reported annual catches of smooth hammerhead sharks by Taiwan's tuna longline fleets have ranged from 81 mt to 149 mt (Fisheries Agency of Chinese Taipei 2015).

According to the annual reports of Chinese Taipei, provided to the Western and Central Pacific Fishery Commission (WCPFC), over 93 percent of the smooth hammerhead bycatch can be attributed to the small scale tuna longline vessels, which operate mostly in the EEZ of Taiwan but also beyond the EEZ (particularly those vessels with freezing equipment which allows for expansion to more distant waters). Since 2011, reported smooth hammerhead shark catches by both the large and small-scale longline fleets have decreased, but so has fishing effort, with a decline in the number of active vessels engaged in the fisheries (Fisheries Agency of Chinese Taipei 2015). Presently, there is no information to indicate overutilization of *S. zygaena* in Chinese Taipei by these fisheries.

Off the east coast of Australia, smooth hammerhead sharks are normally found in continental shelf waters. While the majority of smooth hammerhead shark catches are taken in the previously discussed Western Australian fisheries, minimal numbers are also caught in the Commonwealth-managed southern shark fishery and the NSW Offshore Trap and Line Fishery, which operates off the eastern and southern coasts of Australia (Macbeth *et al.* 2009; Simpfendorfer 2014). Hammerhead sharks are also occasionally caught in Australia's NSW Shark Meshing Program (SMP). The NSW SMP annually deploys a series of bottom-set mesh nets between September 1st and April 30th along 51 ocean beaches from Wollongong to Newcastle. Based on the data from the NSW SMP, the CPUE of hammerhead sharks (likely *S. zygaena*, given the placement of nets in more temperate waters; Reid *et al.* 2011; Williamson 2011) over the past decade has exhibited a declining trend, although no significant trend was found when data from the start of the program were included (from 1950–2010; Reid *et al.* 2011). Yet, since the 1970s, the number of hammerhead sharks caught per year in the NSW beach nets has decreased by more than 90 percent, from over 300 individuals in 1973 to fewer than 30 in 2008 (Williamson 2011).

While changes in the SMP methods and level of effort since its inception have complicated long-term analyses, in 2005, the SMP was listed as a "key threatening process" by the NSW Fisheries Scientific Committee (convened under Australia's Fisheries Management Act 1994) and the NSW Scientific Committee (convened under Australia's Threatened Species Conservation Act 1995). It was listed as such due to its adverse effect on threatened species, populations, or ecological communities, and its potential for causing species, populations, or ecological communities that are not yet threatened to become threatened. Since 2009, the program has operated in accordance with Joint Management Agreements and an associated management plan, with an objective of minimizing the impact of its nets on non-target species (such as smooth hammerhead sharks) and threatened species to ensure that the SMP does not jeopardize the survival or conservation status of the species. To meet this objective, the SMP developed a "trigger point" that, when tripped, indicates additional measures are needed to comply with the objective. The trigger point is defined as: "*entanglements of non-target species and threatened species over two consecutive meshing seasons exceed twice the annual average catch of the preceding 10 years for those species.*" For smooth hammerhead sharks, the trigger point was estimated at 55 individuals. Based on recent species-specific data from the SMP program, the annual catch of smooth hammerhead sharks has remained below the trigger point for the past 5 years, ranging from 18 sharks captured in 2010 to 42 sharks in 2014, indicating that under the current evaluation parameters, the SMP is not considered to be impacting *S. zygaena* to the extent that it would jeopardize its survival or conservation status (NSW Department of Primary Industries 2015).

To the east, in New Zealand, smooth hammerhead sharks are occasionally caught as bycatch in commercial fisheries, but are prohibited from being targeted. The available data from New Zealand waters, covering the time period from 1986–1997, show no clear trend in smooth hammerhead landings (Francis and Shallard 1998), and corresponding effort information is unavailable. When compared to all shark landings for the same time period, smooth hammerhead sharks comprised <1 percent of the total, indicating that the commercial fisheries in this region likely do not pose a significant threat to the species. However, in an analysis of 195 shark fillets from marketed cartons labelled as lemon fish (*Mustelus lenticulatus),* 14 percent were identified as *S. zygaena* (n=28). Similarly, analysis of 392 shark fins obtained from commercial shark fisheries operating in the Bay of Plenty indicated that 12 percent (n=47) came from smooth hammerhead sharks. These data suggest that while smooth hammerhead sharks may be prohibited from being targeted in New Zealand waters, they are still occasionally landed. However, at present, there is no indication that the impact of this take on the population is significantly contributing to the species' risk of extinction in this region.

In the central Pacific, smooth hammerhead sharks are caught as bycatch in the Hawaii and American Samoa pelagic longline fisheries. NMFS authorizes these pelagic longline fisheries under the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (Pelagics FEP) developed by the Western Pacific Fishery Management Council (WPFMC) and approved by NMFS under the authority of the MSA. The WPFMC has implemented strict management controls for these fisheries. Although smooth hammerhead sharks are not a target species in these pelagic longline fisheries, the measures that regulate the longline fishery operations have helped to monitor the bycatch of smooth hammerhead sharks and may minimize impacts to the species. Some of these regulations include mandatory observers, vessel monitoring systems, designated longline buffer zones, areas of prohibited fishing, and periodic closures and effort limits (see Miller *et al.* (2014a) for more details). A mandatory observer program for the Hawaii-based pelagic longline fishery was also initiated in 1994, with coverage rate that increased to a minimum of 20 percent in 2001. The Hawaii-based deep-set pelagic longline fishery is currently observed at a minimum of 20 percent and the Hawaii-based shallow-set pelagic fishery has 100 percent observer coverage. The American Samoa longline fishery has also had an observer program since 2006, with coverage ranging between 20 percent and 33 percent since 2010.

Based on the available observer data, smooth hammerhead sharks appear to be caught in low numbers and comprise a very small proportion of the bycatch. For example, from 1995–2006, only 49 *S. zygaena* individuals on 26,507 sets total were observed caught for both Hawaii-based pelagic longline fishery sectors combined, translating to an estimated nominal CPUE of 0.001 fish per 1,000 hooks (Walsh *et al.* 2009). Additionally, according to the U.S. National Bycatch Report (NMFS 2011; NMFS 2013b), the Hawaii-based deep-set pelagic longline fishery reported only 2,453.74 pounds (1.1 mt) of smooth hammerheads as bycatch in 2005 and 3,173.91 pounds (1.44 mt) in 2010. The Hawaii based shallow-set pelagic longline fishery reported even lower levels of bycatch, with 930.35 pounds (0.422 mt) in 2005 and no bycatch of smooth hammerhead sharks in 2010. From 2010 to 2013, only three smooth hammerheads were observed caught in the American Samoa longline fishery, all in 2011, with total take extrapolated to 12 individuals (NMFS Pacific Islands Fisheries Science Center (PIFSC), unpublished data). The number of unidentified hammerhead sharks observed caught for the same period was 2, extrapolated to 11 total (PIFSC, unpublished data). Given the strict management of these pelagic longline fisheries and the low levels of bycatch, with no evidence of population declines of smooth hammerhead sharks in this area, there is no information to suggest that overutilization is presently a threat in this portion of the species' range.

The WCPFC, the RFMO that seeks the conservation and sustainable use of highly migratory fish stocks throughout the western and central Pacific Ocean, has also collected data on the longline and purse seine fisheries operating throughout the region; however, data specific to smooth hammerhead sharks (and hammerhead sharks in general) is severely limited. Only since 2011 have WCPFC vessels been required to report specific catch information for hammerhead sharks (in their annual reports to the WCPFC), and it tends to be for the entire hammerhead group (including *S. mokarran, S. lewini,S. zygaena*, and *Eusphyra blochii*). Given the lumping of all hammerhead species together and the limited information on catches and discards, the available data provide little insight into the impact of present utilization levels on the status of smooth hammerhead shark in this region (see Miller (2016) for more details).

Similarly, available WCPFC observer data are also lacking, hindered by low observer rates and spatio-temporal coverage of fishing effort throughout the region. This is particularly true in the longline fisheries where coverage rates have been below 2 percent since 2009, despite the requirement under the Conservation and Management Measure for the Regional Observer Programme (CMM 2007-01) requiring 5 percent observer coverage by June 2012 in each longline fishery (Clarke 2013). With these limitations in mind, the available observer data from 1994–2009 indicate that, in general, catches of hammerhead sharks (*S. mokarran, S. lewini, S. zygaena*, and *E. blochii)* are negligible in all WCPFC fisheries. Rice *et al.* (2015) analyzed the WCPFC observer data through 2014 and found that hammerhead sharks generally have low encounter rates (*i.e.*, low frequency of occurrence in the western and central Pacific Ocean). In the purse-seine fisheries data, Rice *et al.* (2015) noted that observations of hammerhead sharks are "virtually non-existent," and in the longline observer data, hammerheads had a patchy distribution (concentrated around the Hawaiian Islands, Papua New Guinea, and Australian east coast), but relatively stable CPUE (from 2002–2013). However, due to the overall low frequency of occurrence of the species in the data, no conclusions could be made regarding hammerhead shark temporal trends, with Rice *et al.* (2015) noting that a stock assessment to determine the status of the hammerhead shark species throughout the western and central Pacific Ocean would not be feasible at this time.

In the eastern Pacific Ocean, smooth hammerhead sharks are both targeted and taken as bycatch in industrial and artisanal fisheries. While the range of the smooth hammerhead shark is noted as extending as far north as northern California waters, based on the available data, the distribution of the species appears to be concentrated in waters off Mexico and areas south (Miller 2016). Observer data of the west coast based U.S. fisheries further confirms this finding, with smooth hammerhead sharks rarely observed in the catches (Miller 2016). In Mexico, however, sharks, including hammerheads, are considered an important component of the artisanal fishery (Instituto Nacional de la Pesca 2006), and artisanal fisheries account for around 80 percent of the elasmobranch fishing activity (Cartamil *et al.* 2011). Sharks are targeted both for their fins, which are harvested by fishermen for export, and for their meat, which is becoming increasingly important for domestic consumption. Yet, details regarding fishing effort and species composition of artisanal landings are generally unavailable (Cartamil *et al.* 2011).

Information on Mexican artisanal catches specifically of smooth hammerhead sharks was found in studies examining artisanal fishing camps operating off Sinaloa, the "Tres Marias" Islands of Mexico, and Laguna Manuel (Pérez-Jiménez *et al.* 2005; Bizzarro *et al.* 2009; Cartamil *et al.* 2011). While findings from these studies indicate a predominance of immature smooth hammerhead sharks in artisanal landings, the CPUE is low, with *S. zygaena* representing a fairly small component of the shark and hammerhead catch. For example, a 1999 survey of the Sinaloa artisanal elasmobranch-targeted fishery revealed that CPUE (# individuals/vessel/trip) of smooth hammerhead sharks ranged from 0 to 0.7, depending on the season (Bizzarro *et al.* 2009). From 2006–2008, a study of the Laguna Manuela artisanal fishing camp, identified as one of the most important elasmobranch fishing camps in Baja California, found that out of 10,595 captured elasmobranchs over the course of 387 panta trips (small-scale operations, using 5–8 m long boats), only 306 (~3 percent) were smooth hammerhead sharks. The estimated CPUE was 1.32 (mean catch per trip) on gillnet and 0.08 on longline (Cartamil *et al.* 2011). Carcass discard sites were also surveyed outside of the Laguna Manuela fishing camp, with species composition within the sites very similar to the beach survey catch. Within the 17 carcass discard sites, 31,860 elasmobranch carcasses were identified, with 374 attributed to smooth hammerhead sharks (1.17 percent) (Cartamil *et al.* 2011).

In July 2015, the CITES Scientific Authority of Mexico held a workshop in an effort to collect information and assess the vulnerability of CITES-listed shark species to harvesting pressures in fishing grounds throughout all Mexican waters. Participants from government agencies, academic institutions, civil associations and independent consultants with experience on the management and knowledge of shark fisheries in all fishing areas and coasts of Mexico gathered to discuss the available data and conduct Productivity and Susceptibility Assessments for each shark species (following methods proposed by Patrick *et al.* 2010; Benítez *et al.* (2015)). For *S. zygaena,* the semi-quantitative assessment looked at the species' vulnerability in specific fishing zones along the Pacific coast and also by fishing vessel type (small or coastal vessels versus large fishing vessels). Results from the assessment showed that *S. zygaena* had a medium to low vulnerability to fishing pressure by large Mexican fishing vessels for all evaluated fishing zones, and a higher vulnerability to fishing by smaller/coastal vessels, particularly off the Pacific coast of Baja California south to Jalisco (Benítez *et al.* 2015). While these assessments provide managers and scientists with an index of the vulnerability of target and non-target species to overfishing within a fishery (*e.g., S. zygaena* is more likely to experience overfishing by smaller/coastal vessels as opposed to the larger fishing vessels), it does not provide information on the current status of the species or whether the species, is, in fact, being overfished in waters off Mexico.

While the best available information, including from the above assessment and the fisheries surveys, shows that smooth hammerhead sharks (and particularly juveniles) are being utilized and face higher fishing pressure in the Mexican artisanal fisheries, without any information on current population size or CPUE trends in this region, the impact of this level of utilization on the extinction risk of the species is presently unknown. Due to the limited data available, the status of the Mexican *S. zygaena* population remains highly uncertain, with no data to indicate that overutilization is a threat significantly contributing to the species' risk of extinction.

In waters farther south in the Eastern Pacific, three countries (Costa Rica, Ecuador and Peru) contribute significantly to shark landings and are important suppliers of shark fins for the Asian market. In Costa Rica, where shark fishing is still allowed, the limited available fisheries data suggest that smooth hammerhead sharks are only rarely caught as catch and bycatch (Whoriskey *et al.* 2011; Dapp *et al.* 2013). However, recent data on fin exports indicate that the species, at least when caught, is kept and utilized for the international fin trade market. For example, in December 2014, around 259.2 kg of *S. zygaena* fins and 152 kg of *S. lewini* fins were exported out of Costa Rica to Hong Kong (Boddiger 2015). In February 2015, Costa Rican officials allowed the export of another batch of scalloped and smooth hammerhead fins, with estimates of total weight between 249–490 kg (depending on the source of information) (Boddiger 2015). The conservation group Sea Turtle Recovery Programme estimated that these fins came from between 1,500 and 2,000 hammerhead sharks (Boddiger 2015). While the impact of this take on the smooth hammerhead population is highly uncertain, given the lack of species-specific abundance estimates or trends for this region, in March 2015, the National System of Conservation Areas, in its role as the CITES Administrative Authority of Costa Rica, stated that no more export permits for hammerhead fins would be issued until the CITES NDF process is completed (Murias 2015). Whether this moratorium on exports will curb fishing of hammerhead sharks and decrease fishery mortality rates for the species has yet to be seen. In addition, depending on the findings from the NDF process, some level of export of hammerhead products may still be allowed in the future. Nevertheless, without information on the size or distribution of the smooth hammerhead population in this region, or evidence of declines in abundance, the best available information does not presently suggest that current levels of fishery-related mortality are significantly contributing to the overutilization of *S. zygaena.*

In Ecuador, directed fishing for sharks is prohibited, but sharks can be landed if caught as bycatch. Hammerhead sharks, in particular, tend to be landed as incidental catch and, similar to Costa Rica, are used primarily for the fin trade. Unlike many of the other areas discussed in this report, smooth hammerhead sharks appear to be the dominant hammerhead species caught in Ecuadorian waters. Based on artisanal records from 2007–2011, catches of *S. zygaena* are on the order of three to four times greater than catches of *S. lewini* (see Miller 2016). Additionally, the majority of the smooth hammerhead sharks taken in Ecuadorian fisheries appear to be immature (Aguilar *et al.* 2007; Cabanilla and Fierro 2010), which, as mentioned previously, could potentially negatively affect recruitment and contribute to declines in the abundance of smooth hammerhead sharks. However, without information on corresponding fishing effort or population sizes, inferences regarding the status of the species or the impacts of current levels of take on the extinction risk of the species in Ecuador cannot be made with any certainty at this time.

In waters off Peru, smooth hammerhead sharks are also prevalent. In fact, from 2006–2010, *S. zygaena* was the third most commonly landed shark species (comprising 15 percent of the shark landings) by the Peruvian small-scale fishery (Gonzalez-Pestana *et al.* 2014). In a 61-year analysis of Peruvian shark fisheries, Gonzalez-Pestana *et al.* (2014) noted a significant increase in the amount of reported landings for smooth hammerhead sharks between 2000 and 2010, with peaks in 1998 and 2003. The authors estimated that landings increased by 7.14 percent per year (confidence interval: 1.2–13.4 percent); however, if the 2003 estimates (which appear to strongly influence the analysis) are removed from the dataset, smooth hammerhead landings show a fairly stable trend since 1999 (<500 t). Based on the latest available landings figure from 2014 of 364 t, this trend does not appear to have changed (Instituto del Mar del Peru 2014). However, as Gonzalez-Pestana *et al.* (2014) note, without accompanying information on fishing effort, it is difficult to fully understand the dynamics of the shark fishery, and particularly, in this case, its impact on the smooth hammerhead population.

In terms of the data from the RFMO that operates within the Eastern Pacific, the Inter-American Tropical Tuna Commission (IATTC), bycatch of hammerhead sharks has been variable between 1993 and 2013. Specifically, catches of hammerhead sharks by large purse seine vessels peaked in 2003–

2004, at around 3,000 sharks, before significantly decreasing. This decline is thought to be, in part, a result of purse seiners moving fishing effort farther offshore in recent years to waters with fewer hammerhead sharks, but could also reflect a decline in the actual abundance of hammerhead sharks (Hall and Roman 2013). Since 2006, annual bycatch of hammerhead sharks has fluctuated between 750 and 1,400 individuals (Román-Verdesoto and Hall 2014). The Scientific Advisory Committee to the IATTC noted that this purse-seine catch may represent only a relatively small portion of the overall harvest of hammerhead sharks in this region, with insufficient data (due to the rarity of *Sphyrna* spp. in the catch) to provide for a meaningful analysis. Rather, the Committee indicated that the majority of harvest in this region is likely taken by the artisanal fisheries (Hall and Roman 2013; IATTC 2015). However, as already discussed, and further acknowledged by others in reviewing the IATTC information (Hall and Roman 2013; Román-Verdesoto 2015), the data from these artisanal fishing operations are, for the most part, largely unavailable or not of the detail needed (*e.g.*, species-specific with corresponding fishing effort over time) to examine impacts on the populations (Hall and Roman 2013; Román-Verdesoto 2015). Thus, at this time, the best available information does not provide evidence that overutilization is a threat significantly contributing to the species' risk of extinction in the Eastern Pacific portion of its range.

Shark Fin Trade

As noted in the above regional reviews examining utilization of the species, hammerhead sharks are primarily targeted and valued particularly for their fins. As hammerhead fins tend to be large in size, with high fin needle content (a gelatinous product used to make shark fin soup), they are one of the most valuable fins in the international market. Based on 2003 figures, smooth hammerhead shark fins fetch prices as high as $88/kg (Abercrombie *et al.* 2005). In the Hong Kong fin market, which is the largest fin market in the world, *S. lewini* and *S. zygaena* are mainly traded under a combined market category called *Chun chi*, and found in a 2:1 ratio, respectively (Abercrombie *et al.* 2005; NMFS 2014a). Based on an analysis of the Hong Kong fin data from 2000–2002, *Chun chi* was the second most traded category, comprising around 4–5 percent of the annual total fins (Clarke *et al.* 2006a), and translating to around 1.3–2.7 million individuals of scalloped and smooth hammerhead sharks (equivalent to a biomass of 49,000–90,000 tons) traded each year (Clarke *et al.* 2006b). By 2003–2004, both global catches of chondrichthyans and trade in shark fins peaked (Dent and Clarke 2015; Eriksson and Clarke 2015). However, as the impacts of this exploitation, particularly of chondrichthyan species to match the demand for their fins, became increasingly more apparent, many countries and states began passing management measures and regulations to discourage and dis-incentivize fishermen from targeting vulnerable sharks, and particularly their fins, for the international shark fin trade (PEW Environment Group 2012; Whitcraft *et al.* 2014; Miller 2016). Between 2008 and 2011, quantities of chondrichthyan catches and trade in shark fins leveled out at around 82–83 percent of the peak figure (Dent and Clarke 2015; Eriksson and Clarke 2015). In 2012, the trade in shark fins through China, Hong Kong Special Administrative Region (SAR), which has served as an indicator of the global trade for many years, saw a decrease of 22 percent from 2011 figures, indicating that recent government-led backlash against conspicuous consumption in China, combined with the global conservation momentum, appears to have had an impact on traded volumes (Dent and Clarke 2015; Eriksson and Clarke 2015). Dent and Clarke (2015) also note that a number of other factors may have contributed to this downturn in the trade of fins through Hong Kong SAR, including: Increased domestic chondrichthyan production by the Chinese fleet, increased monitoring and regulation of finning, a change in trade dynamics, other trade bans and curbs, and an overall growing conservation awareness. Potentially, if the demand for fins continues to decrease in the future, so will the direct targeting of hammerhead sharks (and illegal fishing of the species—see *Inadequacy of Existing Regulatory Measures*). Additionally, with the listing of the species on CITES Appendix II, for those countries unable to make NDFs, such as Japan, the incentives for fishermen to target or retain hammerhead sharks for trade will also likely decline and contribute to a decrease in fishing pressure. The extent (magnitude) to which this decrease in fishing pressure will translate to a decrease in mortality of the species is currently unclear, but will likely only benefit the species. As such, at this time, the best available information does not indicate that overutilization, including the demand for smooth hammerhead sharks in the shark fin trade, is a threat significantly contributing to the species' risk of extinction throughout its global range, now or in the foreseeable future.

Disease or Predation

No information has been found to indicate that disease or predation is a factor that is negatively affecting the status of smooth hammerhead sharks. These sharks have been documented as hosts for the nematodes *Parascarophis sphyrnae* and *Contracaecum* spp. (Knoff *et al.* 2001); however, no data exist to suggest these parasites are affecting *S. zygaena* abundance. Additionally, predation is also not thought to be a factor negatively influencing smooth hammerhead shark abundance. The most significant predator on smooth hammerhead sharks is likely humans; however, a study from New Zealand observed two killer whales (*Orcinus orca*) feeding on a small, juvenile (~100 cm TL) smooth hammerhead shark (Visser 2005). In a 12-year period that documented 108 encounters with New Zealand killer whales, only 1 smooth hammerhead shark was preyed upon (Visser 2005); thus, predation on *S. zygaena* by killer whales is likely opportunistic and not a contributing factor to abundance levels of smooth hammerhead sharks. Juvenile smooth hammerhead sharks also likely experience predation by adult sharks (including their own species); however, the rate of juvenile predation and the subsequent impact to the status of smooth hammerhead sharks is unknown. As such, at this time, the best available information does not indicate that disease or predation are threats significantly contributing to the species' risk of extinction throughout its global range, now or in the foreseeable future.

The Inadequacy of Existing Regulatory Mechanisms

Although none of the previously discussed ESA section 4(a)(1) factors were identified as significant threats to *S. zygaena*, existing regulatory mechanisms in some portions of the species' range could be strengthened (or better enforced) to promote the long-term viability of the species. For example, in a recent study that examined current regulatory and management measures for smooth hammerhead sharks, including data collection requirements and level of compliance, Lack *et al.* (2014) concluded that additional management measures (particularly species-specific management measures) could benefit the species. For a comprehensive list of current management measures pertaining to hammerhead sharks, as well as sharks in general, see the Appendix in Miller (2016).

Despite the number of existing regulatory measures in place to protect sharks and promote sustainable fishing, enforcement tends to be difficult, and illegal fishing has emerged as a problem in many fisheries worldwide. Specifically, illegal fishing occurs when vessels or harvesters operate in violation of the laws of a fishery. In order to justify the risks of detection and prosecution involved with illegal fishing, efforts tend to focus on high value products (*e.g.,* shark fins) to maximize returns to the illegal fishing effort. Thus, as the lucrative market for shark products, particularly shark fins, developed, so did increased targeting, both legal and illegal, of sharks around the world. Given that illegal fishing tends to go unreported, it is difficult to determine, with any certainty, the proportion of current fishery-related mortality rates that can be attributed to this activity. This is particularly true for smooth hammerhead sharks, where even legal catches go unreported. A study that provided regional estimates of illegal fishing (using FAO fishing areas as regions) found the Western Central Pacific (Area 71) and Eastern Indian Ocean (Area 57) regions have relatively high levels of illegal fishing (compared to the rest of the regions), with illegal and unreported catch constituting 34 percent and 32 percent of the region's catch, respectively (Agnew *et al.* 2009). The annual value of high seas illegal, unreported and unregulated (IUU) catches of sharks worldwide has been estimated at $192 million (High Seas Task Force 2006) and annual worldwide economic losses from all IUU fishing is estimated to be between $10 billion and $23 billion (NMFS 2015d).

However, as mentioned in the *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section of this finding, given the recent downward trend in the trade of shark fins (Dent and Clarke 2015; Eriksson and Clarke 2015), illegal fishing for the sole purpose of shark fins may not be as prevalent in the future. It is also a positive sign that most (70 percent) of the top 26 shark-fishing countries, areas and territories have taken steps to combat IUU fishing, either by signing the Port State Measures Agreement (46 percent) or by adopting a National Plan of Action to prevent, deter, and eliminate IUU or similar plan (23 percent) (Fischer *et al.* 2012). However, whether these agreements or plans translate to less IUU fishing activity is unclear. For example, in quite a few countries, the effective implementation of monitoring, control, and surveillance schemes is problematic, often due to a lack of personnel and financial resources (Fischer *et al.* 2012), and a number of instances of IUU fishing, specifically involving sharks, have been documented over the past decade. For instance, as recently as May 2015, it was reported that Ecuadorian police confiscated around 200,000 shark fins from at least 50,000 sharks after raids on 9 locations in the port of Manta (BBC 2015). In September 2015, Greenpeace activists boarded a Taiwan-flagged boat fishing near Papua New Guinea and found 110 shark fins but only 5 shark carcasses (which was in violation of both the Taiwanese and the WCPFC rules requiring onboard fins to be at most 5 percent of the weight of the shark carcasses) (News24 2015). Recreational fishermen have also been caught with illegal shark fins. A report from June 2015 identified 3 unlicensed recreational fishers operating in waters off Queensland, Australia, and in possession of 3,200 illegal shark fins most likely destined for the black market (Buchanan and Sparkes 2015). While these reports provide just a few examples of recent illegal fishing activities, more evidence and additional reports of specific IUU fishing activities throughout the world can be found in Miller *et al.* (2014a) and Miller *et al.* (2014b).

In terms of tracking IUU fishing, most of the RFMOs maintain lists of vessels they believe to be involved in illegal fishing activities, with the latest reports on this initiative seeming to indicate improvement in combatting IUU. In the most recent 2015 Biennial Report to Congress, which highlights U.S. findings and analyses of foreign IUU fishing activities, NMFS reports that all 10 nations that were previously identified in the 2013 Biennial Report for IUU activities took appropriate actions to address the violations (*e.g.,* through adoption of new laws and regulations or by amending existing ones, sanctioning vessels, and improving monitoring and enforcement) (NMFS 2015c). In the current report, 6 countries were identified for having vessels engaged in IUU fishing activities; however, no countries were identified for engaging in protected living marine resources bycatch or for catching sharks on the high seas (although NMFS caveats this by noting the inability to identify nations due primarily to the restrictive time frames and other limitations in the statute) (NMFS 2015b).

While it is likely that *S. zygaena* is subject to IUU fishing, particularly for its valuable fins, based on the best available information on the species' population trends throughout its range, as well as present utilization levels, the mortality rates associated with illegal fishing and impacts on smooth hammerhead shark populations do not appear to be contributing significantly to the species' extinction risk. Furthermore, illegal fishing activities will likely decrease in the future as nations step up to combat IUU fishing and as the demand for shark fins declines. As such, at this time, the best available information does not indicate that the inadequacy of existing regulatory measures is a threat significantly contributing to the species' risk of extinction throughout its global range, now or in the foreseeable future.

Other Natural or Man-Made Factors Affecting Its Continued Existence

In terms of other natural or manmade factors, environmental pollutants were identified as a potential threat to the species. Many pollutants in the environment, such as brevotoxins, heavy metals, and polychlorinated biphenyls, have the ability to bioaccumulate in fish species. Because of the higher trophic level position and longevity of hammerhead sharks, these pollutants tend to biomagnify in liver, gill, and muscle tissues (Storelli *et al.* 2003; García-Hernández *et al.* 2007; Marsico *et al.* 2007; Escobar-Sanchez *et al.* 2010; Maz-Courrau *et al.* 2012; Lee *et al.* 2015). A number of studies have attempted to study and quantify the concentration levels of these pollutants in fish species, but with a focus on human consumption and safety (Storelli *et al.* 2003; García-Hernández *et al.* 2007; Marsico *et al.* 2007; Escobar-Sanchez *et al.* 2010; Maz-Courrau *et al.* 2012; Lee *et al.* 2015). As such, many of the results from these studies may indicate either "high" or "low" concentrations in fish species, but this is primarily in comparison to recommended safe concentrations for human consumption and does not necessarily have any impact on the biological status of the species.

In terms of smooth hammerhead sharks, mercury appears to be the most studied environmental pollutant in the species. International agencies, such as the Food and Drug Administration and the World Health Organization, have set a recommended maximum mercury concentration of 1 µg/g wet weight in seafood tissues for human consumption. However, observed mercury concentrations in the tissues of smooth hammerhead sharks are highly variable.

For example, Storelli *et al.* (2003) tested tissue samples from four smooth hammerhead sharks from the Mediterranean Sea (size range: 277–303 cm TL) and found that, on average, tissue samples from the liver and muscle had concentrations of mercury that greatly exceeded the 1 μg/g recommended limit. Mean mercury concentration in muscle samples were 12.15 ± 4.60 μg/g and mercury concentration in liver samples averaged 35.89 ± 3.58 μg/g. Similarly, García-Hernández *et al.* (2007) found high concentrations of mercury in tissues of four smooth hammerhead sharks (size range: 163–280 cm TL) from the Gulf of California, Mexico, with mean mercury concentration in muscle tissue of 8.25 ± 9.05 μg/g. In contrast, Escobar-Sanchez *et al.* (2010) tested muscle tissue of 37 smooth hammerhead sharks from the Mexican Pacific (Baja California Sur, Mexico; size range: >55–184 cm TL) and found mercury concentrations were below the maximum safety limit of 1 μg/g (average = 0.73 μg/g; median = 0.10 μg/g). Out of the 37 studied sharks, only one shark had a mercury concentration that exceeded the recommended limit (1.93 μg/g). Likewise, Maz-Courrau *et al.* (2012) also found "safe" concentrations of mercury in smooth hammerhead sharks from the Baja California peninsula. Analysis of muscle tissue samples from 31 smooth hammerhead sharks (mean size = 114 cm TL ± 19.2) showed an average mercury concentration of 0.98 ± 0.92 μg/g dry weight (range: 0.24–2.8 μg/g). The authors also tested mercury concentrations in four prey species of Pacific sharks (mackerel *Scomber japonicus,* lantern fish *Symbolophorus evermanni,* pelagic red crab *Pleuroncodes planipes,* and giant squid *Dosidicus gigas*) and found that *D. gigas,* a common prey item for smooth hammerhead sharks (see *Diet and Feeding*), had the lowest mercury concentration (0.12 ± 0.05 μg/g). The authors suggest that the transfer of mercury to smooth hammerhead sharks is unlikely to come from feeding on cephalopods; however, these results may very well explain the observed low levels of mercury in smooth hammerhead shark tissues (*i.e.,* because these sharks prefer to feed on cephalopods, bioaccumulation of mercury in tissues would likely be low).

In Atlantic waters, Marsico *et al.* (2007) also found that smooth hammerhead sharks had relatively low levels of mercury concentrations (in comparison to the recommended 1 μg/g human consumption limit). Based on muscle tissue samples from 5 smooth hammerhead sharks caught off the coast of Santa Catarina, Brazil, average mercury concentration was 0.443 ± 0.299 μg/g with a range of 0.015–0.704 μg/g. In Indo-Pacific waters, the only information on *S. zygaena* mercury bioaccumulation is an analysis of muscle tissue from a single smooth hammerhead that was caught off Port Stephens, NSW, Australia (Paul *et al.* 2003). The smooth hammerhead shark was 232 cm in length and had a muscle tissue mercury concentration of 1.9 μg/g.

Based on the above information, it appears that mercury concentrations may correlate with size of the smooth hammerhead shark, with larger sharks, such as those examined in the Paul *et al.* (2003), Storelli *et al.* (2003), and García-Hernández *et al.* (2007) studies, containing higher mercury concentrations. However, analyses examining this very relationship show conflicting results (Escobar-Sanchez *et al.* (2010)—no correlation; Maz-Courrau *et al.* (2012)—significant correlation). Furthermore, the effect of these and other mercury concentrations in smooth hammerhead shark populations, and potential risk to the viability of the species, remains unknown. It is hypothesized that these apex predators can actually handle higher body burdens of anthropogenic toxins due to the large size of their livers which "provides a greater ability to eliminate organic toxicants than in other fishes" (Storelli *et al.* 2003) or may even be able to limit their exposure by sensing and avoiding areas of high toxins (like during *K. brevis* red tide blooms) (Flewelling *et al.* 2010). Currently, the impact of toxin and metal bioaccumulation in smooth hammerhead shark populations is unknown. In fact, there is no information on the lethal concentration limits of toxins or metals in smooth hammerhead sharks, or evidence to suggest that current concentrations of environmental pollutants are causing detrimental physiological effects to the point where the species may be at an increased risk of extinction. As such, at this time, the best available information does not indicate that the present bioaccumulation rates and concentrations of environmental pollutants in the tissues of smooth hammerhead sharks are threats significantly contributing to the species' risk of extinction throughout its global range, now or in the foreseeable future.

Threats Assessment Summary

Based on the best available information summarized above and discussed in more detail in the status review (Miller 2016), none of the ESA Section 4(a)(1) factors, either alone or in combination with each other, are identified as threats significantly contributing to the extinction risk of the species. While overutilization poses the largest potential threat to the species, based on the best available data throughout the species' range, present fishery-related mortality rates of the shark do not appear to be affecting the species' demographics to such a degree that cause it to be strongly influenced by stochastic or depensatory processes or on a trajectory toward this point.

In the Atlantic Ocean, where species-specific data is available, the regional and local information indicates that smooth hammerhead sharks tend to be a rare occurrence, observed only sporadically in the fisheries data and in low numbers. In the northwest Atlantic, harvest and bycatch of the species is very low and strong management measures are in place to prevent overfishing of the species. In the southwest Atlantic, while the majority of the catch appears to be juveniles, smooth hammerhead sharks are generally harvested at low levels and comprise a small proportion of the fisheries catch. In the temperate waters of the Mediterranean Sea, smooth hammerhead sharks were historically a common occurrence. However, with the intense coastal fishing and the expansion of the tuna and swordfish longline and drift net fisheries in the 1970s, smooth hammerhead sharks have been fished almost to extinction in the Mediterranean Sea. Fishing pressure remains high in this portion of the species' range, which will likely result in additional fishing mortality and continued declines in the population. However, the Mediterranean comprises only a small portion of the species' range, and given the lack of trends or evidence of significant declines elsewhere in the Atlantic, the available data do not indicate that the overutilization and depletion of the Mediterranean population has significantly affected other *S. zygaena* populations in the Atlantic.

Similarly, in the Indian and Pacific Oceans, the available data, albeit severely lacking, depict a species that is not regularly caught, or caught in large numbers, by fisheries operating in these regions. The majority of fishing effort, particularly in the Indian Ocean, tends to be concentrated in more tropical waters, thereby decreasing the threat of overutilization by these fisheries on the more temperately-distributed smooth hammerhead shark. However, in the Western Pacific, there are a number of fisheries operating within the temperate portions of this region (*e.g.*, off Japan, Australia, New Zealand) that report regular catches of smooth hammerhead sharks. Based on the available data from these fisheries, including catch time series and CPUE data, no clear trends were found that would suggest overutilization is a significant threat to the species. In the Eastern Pacific, artisanal fisheries are responsible for the majority of the smooth hammerhead catch, and land primarily juveniles of the species. However, based on preliminary information on catch trends (primarily from Peru and Ecuador), there is no evidence to suggest that this level of utilization has or is significantly impacting recruitment to the population.

Furthermore, the number of regulatory and management measures, including hammerhead retention bans and finning regulations, as well as the creation of shark sanctuaries, has been on the rise in recent years. These regulations are aimed at decreasing the amount of sharks being landed or finned just for the shark fin trade and work to dis-incentivize fishermen from targeting vulnerable shark species. Additionally, with the CITES Appendix II listing, mechanisms are also now in place to monitor and control international trade in the species and ensure that this trade is not detrimental to the survival of the species in the wild. Already it appears that the demand for shark fins is on the decline. While it is unclear how effective these regulations will be in ultimately reducing fishing mortality rates for the smooth hammerhead shark (given their high at-vessel mortality rates), it is likely to decrease fishing pressure on the species, particularly in those fisheries that target the species and by those fishermen that illegally fish for the species solely for the shark fin trade.

Overall, while there is a clear need for further research and data collection on smooth hammerhead sharks, the best available information at this time does not indicate that any of the ESA Section 4(a)(1) factors, or a combination of these factors, are significantly contributing to the extinction risk of the species throughout its global range, now or in the foreseeable future.

Overall Risk Summary

While the species' life history characteristics increase its inherent vulnerability to depletion, and likely contributed to past population declines of varying magnitudes, the best available information suggests that present demographic risks are low. Smooth hammerhead sharks continue to be exploited throughout their range, particularly juveniles of the species. While it is universally acknowledged that information is severely lacking for the species, including basic catch and effort data from throughout the species' range, global, regional, and local population size estimates, abundance trends, life history parameters (particularly from the Pacific and Indian Oceans), and distribution information, the best available data do not indicate that present fishing levels and associated mortality, habitat modification, disease, predation, environmental pollutant levels, or a combination of these factors, are causing declines in the species to such a point that the species is at risk of extinction or likely to become so in the foreseeable future. Thus, guided by the results from the demographic risk analysis and threats assessment, we conclude that the smooth hammerhead shark is currently at a low risk of extinction throughout all of its range.

Significant Portion of Its Range

The definitions of both "threatened" and "endangered" under the ESA contain the term "significant portion of its range" as an area smaller than the entire range of the species which must be considered when evaluating a species risk of extinction. On July 1, 2014, the Services published the SPR Policy, which provides our interpretation and application for how to evaluate whether a species is in danger of extinction, or likely to become so in the foreseeable future, in a "significant portion of its range" (79 FR 37578; July 1, 2014).

Because we found that the smooth hammerhead shark is at a low risk of extinction throughout its range, under the SPR Policy, we must go on to evaluate whether the species is in danger of extinction, or likely to become so in the foreseeable future, in a "significant portion of its range." The SPR Policy explains that it is necessary to fully evaluate a particular portion for potential listing under the "significant portion of its range" authority only if substantial information indicates that the members of the species in a particular area are likely *both* to meet the test for biological significance *and* to be currently endangered or threatened in that area. Making this preliminary determination triggers a need for further review, but does not prejudge whether the portion actually meets these standards such that the species should be listed. To identify only those portions that warrant further consideration, we will determine whether there is substantial information indicating that (1) the portions may be significant and (2) the species may be in danger of extinction in those portions or likely to become so within the foreseeable future. We emphasize that answering these questions in the affirmative is not a determination that the species is endangered or threatened throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required (79 FR 37578, at 37586; July 1, 2014).

Thus, the preliminary determination that a portion may be both significant and endangered or threatened merely requires us to engage in a more detailed analysis to determine whether the standards are actually met (79 FR 37578, at 37587). Unless both standards are met, listing is not warranted. The SPR policy further explains that, depending on the particular facts of each situation, we may find it is more efficient to address the significance issue first, but in other cases it will make more sense to examine the status of the species in the potentially significant portions first. Whichever question is asked first, an affirmative answer is required to proceed to the second question. *Id.* "[I]f we determine that a portion of the range is not 'significant,' we will not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we will not need to determine if that portion is 'significant' " *Id.* Thus, if the answer to the first question is negative—whether that regards the significance question or the status question—then the analysis concludes and listing is not warranted.

As defined in the SPR Policy, a portion of a species' range is "significant" "if the species is not currently endangered or threatened throughout its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range" (79 FR 37578, at 37609). For purposes of the SPR Policy, "[t]he range of a species is considered to be the general geographical area within which that species can be found at the time FWS or NMFS makes any particular status determination. This range includes those areas used throughout all or part of the species' life cycle, even if they are not used regularly (*e.g.*, seasonal habitats). Lost historical range is relevant to the analysis of the status of the species, but it cannot constitute a significant portion of a species' range" *Id.*

Applying the SPR policy to the smooth hammerhead shark, we first evaluated whether there is substantial information indicating that any portions of the species' range may be significant. After a review of the best available information, we find that the data do not indicate any portion of the smooth hammerhead shark's range as being more significant than another. Smooth hammerhead sharks are highly mobile, with a global distribution, and very few restrictions governing their movements. While the Mediterranean region was recognized as a portion of the species' range in which it is likely at risk of extinction due to threats of overutilization, the Mediterranean represents only a small portion of the global range of the smooth hammerhead sharks. Furthermore, there is no indication that loss of that part of the species' range would constitute a moderate or high extinction risk to the global species, now or in the foreseeable future. As was mentioned previously, the available population and trend data do not indicate that the depletion of the Mediterranean population has significantly affected other *S. zygaena* populations. Thus, the Mediterranean would not qualify as "significant" under the SPR Policy.

Likewise, there is no substantial evidence to indicate that the loss of genetic diversity from one portion of the species' range (such as loss of an ocean basin population) would result in the remaining populations lacking enough genetic diversity to allow for adaptations to changing environmental conditions. Similarly, there is no information to suggest that loss of any portion would severely fragment and isolate the species to the point where individuals would be precluded from moving to suitable habitats or have an increased vulnerability to threats. In other words, loss of any portion of its range would not likely isolate the species to the point where the species would be at risk of extinction from demographic processes, or likely to be so in the foreseeable future, throughout all of its range.

Areas exhibiting source-sink dynamics, which could affect the survival of the species, were not evident in any part of the smooth hammerhead sharks' range. There is also no evidence of a portion that encompasses aspects that are important to specific life history events, but another portion that does not, where loss of the former portion would severely impact the growth, reproduction, or survival of the entire species, now or in the foreseeable future. In fact, potential pupping grounds and nursery areas for the species were identified in all three major ocean basins. In other words, the viability of the species does not appear to depend on the productivity of the population or the environmental characteristics in any one portion.

It is important to note that the overall distribution of the smooth hammerhead shark is still uncertain, considered to be generally patchy but also unknown in large areas, such as the Indian Ocean. As better data become available, the species distribution (and potentially significant portions of its range) will become better resolved; however, at this time, there is no evidence to suggest that any specific portion of the species' range has increased importance over another with respect to the species' survival. As such, we did not identify any portions of the species' range that meet both criteria under the SPR Policy (*i.e.*, the portion is biologically significant *and* the species may be in danger of extinction in that portion, or likely to become so within the foreseeable future). Therefore, listing is not warranted under the SPR policy.

Distinct Population Segment Analysis

The ESA's definition of "species" includes "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Our DPS Policy clarifies our interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). In the 90-day finding addressing the smooth hammerhead shark petition, we stated that we would consider whether the populations requested by the petitioner qualify as DPSs pursuant to our DPS Policy and warrant listing (80 FR 48052; August 11, 2015).

When identifying a DPS, our DPS policy stipulates two elements that must be considered: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. In terms of discreteness, the DPS policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation) or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA. If a population segment is considered discrete under one or more of the above conditions, then its biological and ecological significance is considered. Significance under the DPS policy is evaluated in terms of the importance of the population segment to the overall welfare of the species. Some of the considerations that can be used to determine a discrete population segment's significance to the taxon as a whole include: (1) Persistence of the population segment in an unusual or unique ecological setting; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the population segment differs markedly from other populations of the species in its genetic characteristics.

The petition states that the smooth hammerhead shark is comprised of five DPSs: Northeast Atlantic and Mediterranean Sea, Northwest Atlantic, Southwest Atlantic, Eastern Pacific, and Indo-West Pacific. However, the petition provides no boundary lines for these identified population segments. As such, it is difficult to determine the discreteness and significance of these populations without knowing how to separate these populations, such as the Northwest and Southwest Atlantic populations. Therefore, we had to make assumptions regarding the boundary lines. Below we explain where we made assumptions and provide our evaluation of the qualification of these populations as DPSs under our DPS policy.

In terms of discreteness, the petition asserts that the identified populations are "markedly separate from each other as a result of multiple types of barriers that separate the different populations." Specifically, the petition identifies deep ocean areas as areas that contain the "wrong habitat" for the species and which act as barriers to movement between the petition's identified populations. The petition cites Bester (undated) and Hayes (2007) as support that the species avoids open-ocean and trans-oceanic movements. Additionally, the petitioner cites Diemer *et al.* (2011) to support its statement that the smooth hammerhead shark has less vagility, or freedom to move about, compared to other shark species, therefore making it unlikely that "populations will connect or reconnect even if they are only separated by relatively short distances."

In evaluating the information within Bester (undated), we found no data to suggest that the species cannot make open-ocean or trans-oceanic movements. In the Hayes (2007) paper, the author notes "As semi-oceanic species, they [hammerhead sharks] can be found from continental and insular shelves to deeper water just beyond the shelves, but avoid open-ocean and transoceanic movements (Compagno, 1984)." This statement refers generally to hammerhead sharks and does not specify species. Additionally, in reviewing the Compagno (1984) reference in Hayes (2007), there is no information to indicate that the species is not capable of these movements. In fact, in describing the habitat and biology of smooth hammerhead sharks, Compagno (1984) states that the species is an "active, common, coastal-pelagic and semi-oceanic hammerhead, found . . . at depths from the surface down to at least 20 m and probably much more." While the petitioner notes that this species may be less vagile than other species of sharks (that share similar depth ranges), thus suggesting a low potential for mixing of *S. zygaena* populations, we have no evidence to indicate that any populations of the smooth hammerhead shark are, in fact, markedly separated from other populations of the species.

In our review of the best scientific and commercial information available, we found evidence to indicate that smooth hammerhead sharks are capable of long-distance movements, and, hence, the ability to potentially mix with other populations, with no data to suggest that they could not make trans-oceanic migrations. While the petition only references Diemer *et al.* (2011) as support for limited maximum and average annual movements, and, thus, low vagility for smooth hammerhead sharks (*i.e.,* 384 km and 141.8 km, respectively), we found three additional studies that provided information on movements of *S. zygaena,* and whose results indicate that *S. zygaena* travels significantly farther distances than those reported in the petition. For example, Kohler and Turner (2001) provided available tagging data from recaptured adult smooth hammerhead sharks (n = 6) and found observed maximum distance travelled for *S. zygaena* to be 919 km, with a maximum speed of 4.8 km/day. In June 2015, NOAA scientists tagged a female smooth hammerhead shark (~213 cm FL) off San Clemente Island, CA. Data from the tag showed that the animal traveled more than 400 miles south to the central Baja Peninsula and then returned north to waters off Ventura, CA, making the total distance traveled equal to more than 1,000 miles (>1,609 km) (SWFSC 2015). Clarke *et al.* (2015) also noted the ability of the species to travel significant distances, citing a study off New Zealand that found tagged individuals traveled to Tonga, a distance of around 1,200 nm (2,222 km). In fact, Clarke *et al.* (2015) characterized *S. zygaena* as the most oceanic of the hammerhead species. This characterization is further supported by Kohler *et al.* (1998), who showed tagging locations of *S. zygaena* in the central Atlantic Ocean, between 20° W. and 30° W. longitudes, indicating the presence of the species in open-ocean water areas. The presence of smooth hammerhead sharks in oceanic waters is also confirmed by fisheries data from the southwest Atlantic (Amorim *et al.* 2011), tropical Atlantic Ocean (Matsushita and Matsunaga 2002; Dai *et al.* 2009), and eastern Pacific Ocean (Román-Verdesoto 2015). Given the above information on long-distance movements and presence in oceanic waters, we do not find that the populations identified by the petitioner are markedly separate from each other as a consequence of physical or habitat barriers.

The petition also asserts that populations of smooth hammerhead sharks are genetically distinct from each other, but notes that "there is not extensive species-specific genetic differentiation information available." The petition cites Duncan *et al.* (2006), who examined the global phylogeography of the scalloped hammerhead shark and compared haplotypes of *S. lewini* to those of nine individuals of *S. zygaena.* The origin of these 9 *S. zygaena* samples were only identified as Atlantic (n = 6), Pacific (n = 2) and Indian (n = 1). The authors found high haplotype diversity for smooth hammerhead sharks (similar to the variation in scalloped hammerhead haplotype diversity); however, this analysis was based on very few samples of *S. zygaena* from non-specific locations and, therefore, provides no information regarding the genetic discreteness of the petitioner's identified populations, particularly between the Northeast Atlantic and Mediterranean Sea, Northwest Atlantic, and Southwest Atlantic populations, and between the Eastern Pacific and Indo-West Pacific populations. Additionally, the Duncan *et al.* (2006) study examined mitochondrial DNA (mtDNA). Mitochondrial DNA is maternally-inherited, and, as such, differences in mtDNA haplotypes between populations do not necessarily mean that the populations are substantially reproductively isolated from each other because they do not provide any information on males. As demonstrated in previous findings, in species where female and male movement patterns differ (such as philopatric females but wide-ranging males), analysis of mtDNA may indicate discrete populations, but analysis of nuclear (or bi-parentally inherited) DNA could show homogenous populations as a result of male-mediated gene flow (see *e.g.,*loggerhead sea turtle, 68 FR 53947, September 15, 2003, and sperm whale, 78 FR 68032, November 13, 2013).

The petitioners also cite to the genetic information provided in Abercrombie *et al.* (2005) as support of the genetic differentiation between Pacific and Atlantic Ocean smooth hammerhead individuals. However, similar to the discussion above, this analysis was based on very few *S. zygaena* samples from non-specific locations (n = 7 samples from Atlantic; n = 34 from Pacific) and, therefore, provides no information regarding the genetic discreteness of the petitioner's identified populations, particularly between the Atlantic populations and between the Indo-West and Eastern Pacific populations. Additionally, neither the petitioner, nor the information in the Abercrombie *et al.* (2005), discuss the relative importance of the differences in the observed amplicons (segments of chromosomal DNA that undergo amplification and contain replicated genetic material) between the Atlantic and Pacific *S. zygaena* primers (strands of short nucleic acid sequences that serve as starting points for DNA synthesis) in terms of genetic diversity between these populations. Finally, the petition cites fossil records (Lim *et al.* 2010) as evidence that would support genetic differentiation amongst populations. The Lim *et al.* (2010) study used samples of *S. zygaena* from only one location (South Africa) to examine the phylogeny of all hammerhead species. The study provides no information on the genetic differentiation amongst the populations identified by the petitioner.

As discussed previously in this finding, as well as in the smooth hammerhead shark status review (Miller 2016), very few studies have examined the population structure of *S. zygaena.* In addition to the studies referenced by the petitioner, we evaluated two other available genetic studies (Naylor *et al.* (2012) and Testerman (2014)) to determine if they provided evidence to support the discreteness of the petitioner's identified populations. Similar to the Duncan *et al.* (2006) study, Naylor *et al.* (2012) analyzed mtDNA from *S. zygaena* individuals. This study also suffered from a small sample size (n = 16), but provided specific locations of the analyzed specimens (4 from Gulf of California, 6 from Northwest Atlantic, 3 from Taiwan, and 1 each from Senegal, Vietnam, and Japan). While these samples do not cover all of the identified petitioner's populations (*i.e.*, no samples from the Southwestern Atlantic, Northeastern and Mediterranean, or Eastern Pacific), they provide some limited information for evaluating the discreteness of the Northwestern Atlantic and Indo-Pacific populations. The results from the Naylor *et al.* (2012) study show a single cluster of smooth hammerhead sharks, with no evidence to suggest matrilineal genetic partitioning of the species. In other words, the available data do not indicate that the identified Northwestern Atlantic population is markedly separate from the Indo-Pacific population due to genetic differentiation.

In contrast, the Testerman (2014) study found statistically significant matrilineal genetic structuring within oceanic basins and significant genetic partitioning between oceanic basins. Specifically, Testerman (2014) analyzed both mitochondrial control region sequences (mtCR; n = 303, 1,090 bp) and 15 nuclear microsatellite loci (n = 332) from smooth hammerhead sharks collected from eight regional areas: Western North Atlantic (n = 21); western South Atlantic (n = 55); western Indian Ocean (n = 63); western South Pacific (n = 44); western North Pacific (n = 11); eastern North Pacific (n = 55); eastern Tropical Pacific (n = 15); and eastern South Pacific (n = 26). Results from the analysis of mtDNA indicated between-basin genetic structuring between the Atlantic and Indo-Pacific basins (mtCR $\varphi_{ST} = 0.8159$), and shallow genetic variation among individuals from the Atlantic, eastern Tropical/South Pacific, western North Pacific, and western Indian Ocean. Analysis of the nuclear DNA (which is bi-parentally inherited) also showed significant genetic structure between ocean basins (nuclear $F_{ST} = 0.0495$), with the Atlantic and Indo-Pacific considered to comprise two genetically distinct populations (Testerman 2014). However, unlike the mtDNA results, no significant structure was detected within oceanic basins using the nuclear markers, suggesting evidence of potential female philopatry and male mediated gene flow (Testerman 2014). In other words, the available data support genetic differentiation on a broad scale, between the Atlantic and Indo-Pacific basins, but do not provide genetic evidence of the discreteness of the populations identified by the petitioner. Furthermore, the Testerman (2014) study did not include samples from all of the petitioner's identified populations, including the Northeast Atlantic and Mediterranean population or the eastern Indian Ocean (with the assumption that these individuals are part of the identified Indo-West Pacific population). Additionally, as Testerman (2014) indicates, more studies are needed, and in particular studies using samples from individual smooth hammerhead sharks of known size class and gender, to further refine the population structure of the smooth hammerhead shark and confirm the above results. Given the best available information, we do not find that the populations identified by the petitioners are markedly separate from each other as a consequence of genetic differences.

Finally, the petition asserts that the populations are "delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms exist." The petition notes that the range of the smooth hammerhead shark is global, and, as such, extends across international government boundaries and waters regulated by different RFMOs. The petition references its discussion of the "Inadequacy of Existing Regulatory Mechanisms" as evidence of the overutilization of the species due to differences in control of exploitation of the species, management of habitat, conservation status, and regulatory mechanisms. The petition argues that because "various international, national, regional, and RFMO regulations relevant to the species exist throughout all of the aforementioned populations, and since exploitation in these populations varies, they all meet the discreteness requirement."

We find that the populations identified by the petitioner are not delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA. Firstly, we note that three of the petitioner's identified populations (the Northeast Atlantic and Mediterranean Sea population, the Northwest Atlantic population, and the Southwest Atlantic population) are governed by the same RFMO, ICCAT. The ICCAT convention area covers all waters of the Atlantic as well as adjacent Seas, including the Mediterranean. In 2010, ICCAT adopted recommendation 10–08 prohibiting the retention onboard, transshipment, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family Sphyrnidae (except for *S. tiburo*) taken in the Convention area in association with ICCAT fisheries. In other words, these populations are not delimited by international governmental boundaries within which differences in the control of exploitation of the species exist as these populations are all governed under the same RFMO, which presently prohibits the retention and sale of the smooth hammerhead shark in its fisheries. Additionally, the RFMO GFCM, whose convention area covers Mediterranean waters and the Black Sea, passed a similar recommendation based on ICCAT 10–08, further supporting the finding that the regulations governing the exploitation of the Northeast Atlantic and Mediterranean Sea population (*e.g.*, the prohibition of retention and selling of *S. zygaena* individuals) are no different than those governing the exploitation of the Northwest Atlantic population or Southwest Atlantic population.

Secondly, we did not find evidence of the overutilization of any of the populations identified by the petitioner due to differences in control of the exploitation of the species, management of habitat, conservation status, or regulatory mechanisms across international governmental boundaries. The status review report (Miller 2016) provides a detailed discussion of the threat of overutilization, and presents this analysis by region. These regional discussions encapsulate the petitioner's identified populations, and, therefore, can be used to evaluate whether differences in the control of exploitation exist that are significant in light of Section 4(a)(1)(D) of the ESA. However, since this finding has already discussed, in detail, the threat of overutilization by region (see *Overutilization for Commercial, Recreational, Scientific or Educational Purposes* section), below we provide the conclusions as they relate to the petitioner's identified populations.

In the Northwest Atlantic, we find that existing regulatory measures have significantly decreased the mortality of hammerhead sharks from both targeted fishing and bycatch mortality on fishing gear for other large coastal shark species, with current levels unlikely to lead to overutilization of the species. In the Southwest Atlantic, we find that smooth hammerhead sharks tend to generally be harvested at low levels and that the available species-specific information does not indicate that overutilization is a significant threat presently contributing to the species' risk of extinction in this region. In the Indo-West Pacific, we find that the best available information, including catch time series and CPUE data, does not indicate that present utilization of the species is contributing significantly to its risk of extinction within this region. In the Eastern Pacific, we find that the best available information does not indicate that the species has suffered declines to the point where it is at risk from depensatory processes or that present utilization levels are impacting populations of *S. zygaena* to such a degree that would significantly increase the species' risk of extinction in this region.

For the Northeastern and Mediterranean population, while we found that the best available information suggests that smooth hammerhead sharks in the Mediterranean Sea have significantly declined, and acknowledge that existing regulatory mechanisms may not be adequate to prevent overutilization of the smooth hammerhead sharks specifically when they occur in the Mediterranean, the same cannot be concluded for those sharks when they occur in the Northeastern Atlantic. Available hammerhead-specific information from the Northeastern Atlantic shows a variable trend in the catch and abundance of hammerhead sharks over the past decade, and without additional information on present abundance levels, distribution information, or catch and overall utilization rates of the smooth hammerhead shark, we found that the best available information does not indicate that overutilization is a threat significantly contributing to the species' risk of extinction in this region. Additionally, as noted previously, the current regulations managing the exploitation of the Northeastern and Mediterranean population are not significantly different across international governmental boundaries.

Given the above findings on the exploitation of the populations identified by the petitioner, as well as the information on the other ESA Section 4(a)(1) factors discussed previously in this finding, we do not find that the petitioner's identified populations are delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, and regulatory mechanisms exist that are significant in light of Section 4(a)(1)(D) of the ESA.

As stated in the joint DPS policy, Congress expressed its expectation that the Services would exercise authority with regard to DPSs sparingly and only when the biological evidence indicates such action is warranted. Based on our evaluation of the best available scientific information, we do not find biological evidence to suggest that any of the populations identified by the petitioner meet the discreteness criterion of the DPS Policy. Because the identified populations are not discrete from each other, we do not need to determine whether the identified populations are significant to the global taxon of smooth hammerhead sharks, per the DPS policy. As such, we find that none of the population segments identified by the petitioner qualify as a DPS under the DPS policy and, therefore, none warrant listing under the ESA.

Similarity of Appearance Listing

The Defenders of Wildlife petition requested that we also consider listing the smooth hammerhead shark as threatened or endangered based on its similarity of appearance to the listed scalloped hammerhead shark DPSs. Section 4 of the ESA (16 U.S.C. 1533(e)) provides that the Secretary may treat any species as an endangered or threatened species even though it is not listed pursuant to Section 4 of the ESA when the following three conditions are satisfied: (1) Such species so closely resembles in appearance, at the point in question, a species which has been listed pursuant to such section that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species; (2) the effect of this substantial difficulty is an additional threat to an endangered or threatened species; and (3) such treatment of an unlisted species will substantially facilitate the enforcement and further the policy of this chapter (16 U.S.C. 1533(e)(A)–(C)).

While we find that the smooth and scalloped hammerhead sharks do closely resemble each other in appearance, we do not find that this resemblance poses an additional threat to the listed scalloped hammerhead shark, nor do we find that treating the smooth hammerhead shark as an endangered or threatened species will substantially facilitate the enforcement of current ESA prohibitions or further the policy of the ESA. As described in the scalloped hammerhead shark final rule (79 FR 38213; July 3, 2014) and critical habitat determination (80 FR 71774; November 17, 2015), the significant operative threats to the listed scalloped hammerhead DPSs are overutilization by foreign industrial, commercial, and artisanal fisheries and inadequate regulatory mechanisms in foreign nations to protect these sharks from the heavy fishing pressure and related mortality in waters outside of U.S. jurisdiction. While three of the listed DPSs have portions of their range within U.S. waters (*i.e.*, the Central and Southwest Atlantic DPS, Eastern Pacific DPS, and Indo-West Pacific DPS), the take and trade of scalloped hammerhead sharks by persons under U.S. jurisdiction were not identified as significant threats to the listed DPSs. In fact, for the threatened scalloped hammerhead shark DPSs (*i.e.*, the Central and Southwest Atlantic DPS and Indo-West Pacific DPS), we determined that prohibiting these activities would not have a significant effect on the extinction risk of those DPSs (79 FR 38213; July 3, 2014). [For the Eastern Pacific DPS, while take and trade of this DPS by persons under U.S. jurisdiction were not identified as significant threats, the take prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) automatically apply because it is listed as endangered under the ESA.] Overall, interaction with the listed scalloped hammerhead shark DPSs by fishermen under U.S. jurisdiction is negligible.

Additionally, the United States does not have a significant presence in the international fin trade, with U.S. exports and imports of *all* species of shark fins comprising less than 0.50 percent of the total number of fins globally exported and imported (based on 2009–2013 data from U.S. Census Bureau, available at: *http://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/index*, and from the FAO, available at: *http://www.fao.org/fishery/statistics/global-commodities-production/en*). As such, it was determined that any conservation actions for the listed scalloped hammerhead shark DPSs that would bring these DPSs to the point that the measures of the ESA are no longer necessary will need to be implemented by foreign nations.

In terms of the impact of fishing pressure on the listed scalloped hammerhead shark DPSs by U.S. fishermen, as the final rule details, this additional mortality is not viewed as contributing significantly to the identified threats of overutilization and inadequate regulatory measures to the listed DPSs (79 FR 38213; July 3, 2014). This is primarily a result of the negligible interaction between U.S.

fishermen and the listed scalloped hammerhead shark DPSs, with the listed DPSs rarely caught by persons under U.S. jurisdiction (Miller *et al.* 2014a). Furthermore, current U.S. fishery regulations prohibiting the landing of scalloped hammerhead sharks also prohibit the landing of smooth hammerhead sharks. For example, in the Atlantic Ocean, including the Caribbean Sea, Atlantic HMS commercially-permitted vessels that have pelagic longline gear on board, and dealers buying from these vessels, have been prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family Sphyrnidae (except for the *S. tiburo*) (76 FR 53652; August 29, 2011). As such, there is unlikely to be any enforcement issue requiring officials to distinguish between, for example, endangered Eastern Atlantic DPS of scalloped hammerhead sharks and smooth hammerhead sharks as both species are prohibited from being landed.

In the Pacific, the core range of the endangered Eastern Pacific DPS is outside of U.S. jurisdiction (80 FR 71774; November 17, 2015). Based on the information from the scalloped hammerhead shark status review (Miller *et al.* 2014a), catch of this DPS by U.S. fishermen is extremely rare. In fact, observer data collected from 1993 to 2015 indicate that no scalloped hammerhead sharks have been observed caught by large U.S. purse seine vessels (>363 mt capacity) operating in the Eastern Pacific Ocean since 2006 (C. Barroso, Fishery Policy Analyst, personal communication 2016). Furthermore, the U.S. States and territories located in the Pacific have passed laws addressing the possession, sale, trade, or distribution of shark fins, which will further discourage landing of scalloped hammerhead sharks. These U.S. states and territories (and year that law was passed) include Hawaii (2010), California (2011), Oregon (2011), Washington (2011), the Commonwealth of the Northern Mariana Islands (2011), Guam (2011), and American Samoa (2012). As such, it is unlikely that U.S. fishermen will be landing hammerhead species in the United States if their fins cannot be traded. Hence, we do not foresee enforcement difficulties related to distinguishing between hammerhead species. As an additional note, the states of Illinois (2012), Maryland (2013), Delaware (2013), New York (2013), and Massachusetts (2014) have also passed similar laws prohibiting the possession, sale, trade, or distribution of shark fins.

With the passage of the U.S. Shark Conservation Act (Pub. L. 111–348, Jan. 4, 2011), except for smooth dogfish sharks (*Mustelus canis*), it is also now illegal to "remove any of the fins of a shark (including the tail) at sea; to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached." As mentioned in the U.S. Shark finning report to Congress (NMFS 2014a), these provisions have improved the ability of U.S. enforcement personnel to enforce shark finning prohibitions in domestic shark fisheries. These shark finning prohibitions also facilitate enforcement of ESA prohibitions as any landed hammerhead shark will have its fins attached to its corresponding carcass. As noted in the NMFS Shark Fin ID Guide, while the first dorsal fins of the smooth and scalloped hammerhead shark are "almost indistinguishable," the pectoral fins differ in coloration and can be "easily identified" (Abercrombie *et al.* 2013). Specifically, in scalloped hammerhead sharks, the ventral surfaces of the pectoral fins have dark patches concentrated at the apex whereas smooth hammerheads lack this dark patch. Since these sharks must be landed with all their fins naturally attached to the carcass, enforcement officials at U.S. ports can use the differences in pectoral fin coloration to differentiate between the species. If the cephalophoil (or head) of the hammerhead shark is also left on the carcass, it provides an additional morphological distinction that can be used to differentiate the species as the smooth hammerhead shark lacks the central indentation that is found on the scalloped hammerhead shark cephalophoil. Regardless, as previously mentioned, there are no ESA take prohibitions for the threatened scalloped hammerhead sharks found in U.S. waters in the Caribbean (Central and Southwest Atlantic DPS) or western Pacific (Indo-West Pacific DPS) and coupled with the other state and Federal fishery regulations that have been implemented in U.S. Atlantic and Pacific waters, it will largely be unnecessary for enforcement personnel to differentiate between landed smooth and scalloped hammerhead sharks for the furtherance of the ESA.

For the reasons above, we do not find it advisable to further regulate the commerce or taking of the smooth hammerhead shark by treating it as an endangered or threatened species based on similarity of appearance to the listed scalloped hammerhead shark DPSs.

Final Determination

Section 4(b)(1) of the ESA requires that NMFS make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information including the petition, public comments submitted on the 90-day finding (80 FR 48053; August 11, 2015), the status review report (Miller 2016), and other published and unpublished information, and have consulted with species experts and individuals familiar with smooth hammerhead sharks. We considered each of the statutory factors to determine whether it presented an extinction risk to the species on its own, now or in the foreseeable future, and also considered the combination of those factors to determine whether they collectively contributed to the extinction risk of the species, now or in the foreseeable future. As previously explained, we could not identify any portion of the species' range that met both criteria of the SPR policy. Additionally, we did not find biological evidence that would indicate that the population segments identified by the petitioner qualify as DPSs under the DPS policy. Therefore, our determination set forth below is based on a synthesis and integration of the foregoing information, factors and considerations, and their effects on the status of the species throughout its entire range.

Based on our consideration of the best available scientific and commercial information, as summarized here and in Miller (2016), we find that the smooth hammerhead shark faces an overall low risk of extinction and conclude that the species is not currently in danger of extinction throughout its range nor is it likely to become so within the foreseeable future. Accordingly, the smooth hammerhead shark does not meet the definition of a threatened or endangered species, and thus, the smooth hammerhead shark does not warrant listing as threatened or endangered at this time. This is a final action, and, therefore, we do not solicit comments on it.

References

A complete list of all references cited herein is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 160517429–6429–01]

RIN 0648–XE635

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Maui and Kona Reef Manta Ray Populations as Threatened Distinct Population Segments Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the Maui and Kona reef manta ray (*Manta alfredi*) populations as threatened distinct population segments (DPSs) under the Endangered Species Act (ESA). We find that the petition and information in our files do not present substantial scientific or commercial information indicating that either the Maui or Kona reef manta ray population may qualify as a DPS under the ESA. As such, we find that the petition does not present substantial scientific or commercial information indicating that the Maui and Kona reef manta ray populations are "species" eligible for listing under the ESA. However, in response to a previous petition to list the entire reef manta ray species under the ESA, we are currently conducting a status review of *M. alfredi* to determine if the species warrants listing throughout all or a significant portion of its range.

ADDRESSES: Copies of the petition and related materials are available on our Web site at *http://www.fisheries.noaa.gov/pr/species/fish/manta-ray.html.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2016, we received a petition from Dr. Mark Deakos to list the Maui and Kona reef manta ray (*M. alfredi*) populations as threatened DPSs under the ESA. The Maui reef manta ray is described as occurring in the State of Hawaii around the islands of Maui, Molokai, Lanai, and Kahoolawe. The Kona reef manta ray is described as occurring off the western side of the Big Island of Hawaii, referred to as the Kona coast. The petition also requested that critical habitat be designated concurrent with the listing. The petition was submitted as a public comment on our previous 90-day finding response on a petition to list the giant manta ray (*M. birostris*) and reef manta ray under the ESA (81 FR 8874; February 23, 2016). Copies of the petitions are available upon request (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS-U.S. Fish and Wildlife Service (USFWS) (jointly, "the Services") policy clarifies the agencies' interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, and "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define "substantial information" in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day finding stage, we evaluate the petitioners' request based upon the information in the petition including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating that the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Analysis of Petition and Information Readily Available in NMFS Files

As mentioned above, in analyzing the request of the petitioner, we first evaluate whether the information presented in the petition, along with information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Because the petition specifically requests listing of DPSs, we evaluate whether the information indicates that the petitioned entities, the Maui and Kona reef manta ray populations, constitute DPSs pursuant to our DPS Policy.

When identifying a DPS, our DPS Policy stipulates two elements that must be considered: (1) The discreteness of the population segment in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the significance of the population segment to the remainder of the species (or subspecies) to which it belongs. In terms of discreteness, the DPS Policy states that a population of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation) or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA. If a population segment is considered discrete under one or more of the above conditions, then its biological and ecological significance is considered. Significance under the DPS Policy is evaluated in terms of the importance of the population segment to the overall welfare of the species. Some of the considerations that can be used to determine a discrete population segment's significance to the taxon as a whole include: (1) Persistence of the population segment in an unusual or unique ecological setting; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the population segment differs markedly from other populations of the species in its genetic characteristics.

In evaluating this petition, we looked for information to suggest that the petitioned entities, the Maui and Kona reef manta ray populations, may qualify as DPSs under both the discreteness and significance criteria of our DPS Policy. Our evaluation is discussed below.

Qualification of the Maui Reef Manta Ray Population as a DPS

The petition asserts that the Maui population of reef manta ray qualifies as a DPS. The petition references research on the population's size (Deakos *et al.* 2011), demographics (Deakos 2010a), home range (Deakos *et al.* 2011), reproductive ecology (Deakos 2012), threats, and ongoing photo-identification, tagging and genetic analysis as evidence that suggests that the Maui population is a DPS that is insular to the Maui County region. While the petition itself fails to provide any details regarding how the population may satisfy either the discreteness or significance criteria of the DPS Policy, we reviewed the referenced documents and our own files for information that may support this assertion.

In terms of discreteness, information cited within the petition suggests that the reef manta rays in the Maui County area (the islands of Maui, Molokai, Lanai and Kahoolawe) exhibit strong, long-term site fidelity (Deakos *et al.* 2011). From 2005 to 2009, 229 SCUBA surveys were conducted at a manta ray aggregation site approximately 450 m off the west coast of Maui, Hawaii. The study area was ~30,000 m^2 in size (Deakos *et al.* 2011). Because manta rays contain unique and distinct markings on their ventral side that appear to remain throughout the animal's lifespan, photo-identification can provide a useful tool to identify new and previously observed manta rays with a high degree of certainty. Over the course of the study, 1,494 manta rays were encountered, with 290 unique individuals identified through the use of photo-identification (Deakos *et al.* 2011). Of the 290 individuals, 73 percent (n=212) were observed more than once in the study area, with 198 individuals re-sighted within a 1-year period and 95 re-sighted over multiple years (Deakos *et al.* 2011). Times between re-sightings ranged from 1 day to over 3 years, with a mean of around 6 months (Deakos *et al.* 2011). Although site fidelity varied between individuals, the authors indicate that the high number and frequency of re-sightings within and across years supports long-term site fidelity to the study area.

In addition to using photo-identification to examine residency and movement, Deakos *et al.* (2011) tagged an adult male and female reef manta ray with acoustic transmitters and tracked these rays for 28 hours and 51 hours, respectively. Results from the tracking data showed that the male traveled a linear distance of 40 km from the tagging site to the island of Lanai, and the female traveled a linear distance of 32 km to the island of Kahoolawe (Deakos *et al.* 2011). The distance from the study area to the Big Island of Hawaii is 49 km (using closest geographic points; Deakos *et al.* 2011), which would appear attainable for *M. alfredi* given that recent satellite and photo-identification studies observed *M. alfredi* making regular migrations over much larger distances (>700 km) (Convention on Migratory Species (CMS) 2014). However, using a catalog of photos identifying 146 reef manta rays from a well-monitored population off Kona (Big Island, Hawaii), the authors note that none of the 290 uniquely identified individuals from the Maui population were a match to the Kona individuals. The authors suggest that depth could be a barrier to migration from Maui to the Big Island (identifying the 2,000 m depth of the Alenuihaha Channel between the two islands) and also from Molokai to Oahu (where depths between the two islands reach 600 m), but recognize future research is needed to confirm this hypothesis, including photo-identification between Oahu individuals and the Maui population (Deakos *et al.* 2011). Deakos *et al.* (2011) suggest that a more likely explanation for the absence of photo-identification matches between the Big Island and Maui reef manta rays is the presence of sufficient resources within the Maui County area to sustain the Maui population, making movement between the two islands unnecessary. While it is clear that further information is required to definitively determine whether the Maui population is discrete from other *M. alfredi* populations, with the authors' own implication that transit may occur if resources diminish, we find that the above information provides substantial information that the Maui reef manta ray population may be markedly separated from other populations of the same taxon as a consequence of physical, ecological, or behavioral factors.

While we find that the Maui population may satisfy the discreteness criteria under our DPS Policy, the petition provides no information on the importance of this population segment to the overall welfare of the species. In reviewing the cited references within the petition, as well as information in our files, we found no evidence to suggest that the population segment persists in an unusual or unique ecological setting. The Maui population segment, described in the petition's references, exists in waters off the islands of Maui, Molokai, Lanai and Kahoolawe. Only a main aggregation site for the population is described in the references, consisting of primarily fringing coral reef, extending away from the shoreline for approximately 550 m, with coral substrate cover composed of lobe (*Porites lobata*), rice (*Acroporidae* spp.), cauliflower (*Pocillopora meandrina*), and finger coral (*Porites compressa),* as well as sand and sea grass (*Halimeda* spp.) (Deakos 2010a; Deakos *et al.* 2011). We have no information, however, to indicate that this substrate cover in the aggregation site is unique to this location. Furthermore, as Marshall *et al.* (2009) describe *M. alfredi* as a species commonly observed inshore, around coral and rocky reefs, productive coastlines, tropical island groups, atolls, and bays, we do not find the Maui County area, which shares these same attributes, to be unique or unusual in terms of an ecological setting for the species. We also do not consider loss of the Maui population segment as resulting in a significant gap in the range of the taxon, nor do we have evidence to suggest that this population segment represents the only surviving natural occurrence of *M. alfredi* within its historical range. As noted in the previous 90-day finding addressing this species (81 FR 8874; February 23, 2016), *M. alfredi* is widespread in tropical and subtropical waters throughout the Indian Ocean (from South Africa to the Red Sea, and off Thailand and Indonesia to Western Australia) and the western Pacific (from the Yaeyama Islands, Japan in the north to the Solitary Islands, Australia in the south), and it occurs as far east as French Polynesia and the Hawaiian Islands (Marshall *et al.* 2009; Mourier 2012). A few historical reports and photographs also place the species off the Canary Islands, Cape Verde Islands, and Senegal (Marshall *et al.* 2009). Furthermore, if the Maui population segment was lost, the species would still be represented in the Central Pacific, and even within the Hawaiian Islands, by other *M. alfredi* populations (*e.g.,* the Kona population; Deakos *et al.* 2011; CITES 2013).

While the petition indicates that a genetic analysis examining the connectivity between the Maui and Kona reef manta ray populations "is almost complete" and "should provide insight into the degree that these populations represent genetically independent stocks," the petition does not provide any further information on the genetics of these populations, nor do we have this type of data available in our files. As such, we have no information to evaluate whether the Maui population segment may differ markedly from other populations of the species in its genetic characteristics. Additionally, none of the references cited by the petition (Deakos 2010a; Deakos 2010b; Deakos *et al.* 2011; Deakos 2012), nor the information in our files, provide any other evidence to suggest that the Maui reef manta ray population segment may make a significant contribution to the adaptive, ecological, or genetic diversity of the taxon.

Overall, based on the information in the petition and in our files, and guided by the DPS Policy criteria, we found evidence to suggest that the Maui reef manta ray population may be discrete, but we were unable to find evidence that could support the potential significance of the Maui reef manta ray population to the taxon as a whole. Thus, we conclude that the petition does not present substantial information to indicate that the Maui reef manta ray population may qualify as a DPS under the DPS Policy.

Qualification of the Kona Reef Manta Ray Population as a DPS

The petition also asserts that the Kona population of reef manta ray qualifies as a DPS. The petition states that photo-identification and tagging of the Kona population suggests that it is also a DPS that is insular to the Big Island region, and possibly restricted to the west coast of the Big Island. However, the petition fails to provide any further information or references to support this assertion. Mentions of the Kona population in the references cited in the petition only exist in relation to the catalog of photos identifying 146 manta rays from this population (citing *www.mantapacific.org*), which was used to compare against photos of individuals from the Maui reef manta ray population (Deakos 2010a; Deakos *et al.* 2011).

In terms of discreteness, we do not consider the lack of photo-identification matches between the Maui population and the Kona population to be substantial evidence indicating that the Kona population may be discrete. As noted above, the Maui population study also included time-series information on re-sightings of individuals within the population, providing support for long-term site fidelity, as well as acoustic tracking of individuals (Deakos 2010a; Deakos *et al.* 2011). Similar information was not provided for the Kona population, nor do we have this information available in our files. Even if we were to consider that the Kona population may be discrete by using the information supporting the potential discreteness of the Maui population as a proxy (*e.g.*, physical barriers, ecological and/or behavioral factors contributing to marked separation), the petition provides no information on the importance of the Kona population segment to the overall welfare of the species, nor do we have that information readily available in our files. Similar to the Maui population, the ecological setting that the Kona population occupies is similar to that of the rest of the species; loss of the population would not constitute a significant gap in the taxon's extensive range; the Kona population does not represent the only surviving natural occurrence of *M. alfredi* within its historical range; and we have no available genetic or other data to suggest that the population may make a significant contribution to the adaptive, ecological, or genetic diversity of the taxon.

Overall, based on the information in the petition and in our files, and guided by the DPS Policy criteria, we were unable to find evidence to suggest that the Kona reef manta ray population may be both discrete and significant. Thus, we conclude that the petition does not present substantial information to indicate that the Kona reef manta ray population may qualify as a DPS under the DPS Policy.

ESA Section 4(a)(1) Factors

Because we concluded that the petition does not present substantial information to indicate that the Maui and Kona reef manta ray populations may qualify as DPSs under the DPS Policy, the petitioned entities do not constitute "species" that are eligible for listing under the ESA. As such, we do not need to evaluate whether the information in the petition indicates that these populations face an extinction risk that is cause for concern.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, and based on the above analysis, we conclude that the petition does not present substantial scientific or commercial information indicating that the petitioned action of identifying the Maui and Kona reef manta ray populations as DPSs may be warranted. As such, we find that the petition does not present substantial scientific or commercial information indicating that the Maui and Kona reef manta ray populations are "species" eligible for listing under the ESA.

While this is a final action, and, therefore, we do not solicit comments on it, we note that we are currently conducting a status review of *M. alfredi* (which considers all global populations of reef manta rays, including the Maui and Kona populations) to determine whether the reef manta ray is in danger of extinction or likely to become so throughout all or a significant portion of its range. More information on that action can be found in the **Federal Register** notice (81 FR 8874; February 23, 2016) announcing the initiation of this status review.

References Cited

A complete list of references is available upon request to the NMFS Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–15201 Filed 6–27–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Community Connectivity Initiative Self-Assessment Tool

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden as required by the Paperwork Reduction Act of 1995, invites the general public and other federal agencies to take this opportunity to comment on the proposed framework for the community connectivity self-assessment tool. This framework is an element of the Community Connectivity Initiative, which is one of the commitments of the National Telecommunications and Information Administration (NTIA) through its work with the Broadband Opportunity Council, which President Obama established to review actions the federal government could take to reduce regulatory barriers to broadband deployment, competition, investment, and adoption. The Community Connectivity Initiative will support communities across the country with tools to help accelerate local broadband planning and deployment efforts. The community connectivity self-assessment tool will provide a framework of benchmarks and indicators on broadband access, adoption, policy and use, helping community leaders identify critical broadband needs and connect them with expertise and resources.

DATES: Written comments must be submitted on or before August 29, 2016.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 1401 and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be sent to Laura Spining, Telecommunications Policy Specialist, Broadband USA, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4878, Washington, DC

20230 (or via email at *lspining@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

In March 2015, President Obama created the Broadband Opportunity Council (Council), composed of 25 federal departments and agencies, to determine what actions the federal government could take to eliminate regulatory barriers to broadband deployment and to encourage investment in broadband networks and services.[1] The Departments of Commerce and Agriculture co-chair the Council.

In parallel with the work of the Council, NTIA launched BroadbandUSA in January 2015 to help satisfy a demand from communities that realize broadband access and use are vital to their economic development, innovation, education, and healthcare needs. BroadbandUSA offers technical assistance, guidance, and resources to communities across the country seeking to expand local broadband deployment, investment, and adoption.

In September 2015, the White House released the Council's report, which describes 36 concrete steps the member agencies will take over the next 18 months to reduce barriers and promote broadband investment and adoption.[2] The Community Connectivity Initiative is one of NTIA's commitments outlined in the Council's report.[3] The purpose of the Community Connectivity Initiative is to empower communities with tools and resources to attract broadband investment and promote meaningful use. NTIA and the National Economic Council conducted outreach to more than 200 stakeholders and communities to seek input on the implementation of this action item. The initial findings of that outreach resulted in collaborators and communities assisting in the creation of the framework for the Community Connectivity Initiative.

The objectives of the Community Connectivity Initiative are: (1) To support communities as they convene, assess, and act to promote local priorities and advance broadband access, adoption, policies, and use; and (2) to increase the number of communities actively assessing connectivity impacts and investing to improve broadband outcomes. The Community Connectivity Initiative includes three resources for communities, including the community connectivity framework, an online self-assessment tool, and a report with recommendations for each participating community. The community connectivity framework provides a structure to engage local stakeholders in conversations about broadband access and community priorities. The online self-assessment tool will provide local leaders with a framework for assessing broadband needs in their communities. The tool will enable them to record their findings and integrate the assessments with national datasets on community broadband. Upon completion of the self-assessment tool, communities will receive a report that combines input from the self-assessment tool with other data sources, along with recommendations for resources that they could use to improve their broadband capabilities.

NTIA is seeking input on the framework and types of questions that the self-assessment tool will ask local community leaders in order to help achieve local priorities and improve broadband planning efforts. NTIA will use the collection of information to support communities working to accelerate broadband deployment, deepen broadband adoption, strengthen local policies, and use broadband to advance local priorities. Through this effort, the Community Connectivity Initiative will produce improved broadband planning assets for communities, thereby increasing the number of communities actively investing to improve broadband access and digital inclusion.

The community connectivity self-assessment tool will collect local input across four major areas, incorporate key local data from national data sources, and produce a report focused on actions communities can take to support broadband deployment and adoption. The four major categories covered in the self-assessment tool are:

1. Broadband Access and Assets (Access)
2. Digital Inclusion and Skills (Adoption)
3. Policy and Funding (Policy)
4. Community Priorities (Use)

The access category will include imported and user-provided data on wireline and fixed wireless broadband access, mobile broadband access, and community technology assets. Additionally, the self-assessment tool will ask community leaders about their communications resilience planning efforts, the availability of WiFi hot spots and public computing centers, and their experiences with the availability, affordability, and quality of broadband in their localities.

The adoption category will include three sub-categories: broadband utilization, digital inclusion, and digital skills. The broadband utilization sub-category will ask about subscriptions to mobile data plans, connections to mobile data plans, and the number of internet-enabled devices owned by people in the community. The digital inclusion sub-category will include questions about the following: Outreach efforts to vulnerable populations; digital literacy training and support services; availability of discount and subsidy programs; device loan programs; and accessibility. The digital skills sub-category will ask community leaders about programs available to their populations that would provide advanced skills to prepare residents and businesses for the digital economy. This topic area includes: digital basics and work skills; digital participation and content creation; coding, computer science and application development; and privacy, security, and online safety.

The policy category will include three sub-categories: leadership, funding, and use of public assets. The leadership sub-category will seek information on whether community leaders consider community connectivity a priority, allocate resources appropriately, and incorporate broadband planning and technology innovation across local agencies. The funding sub-category will ask how a community funds public access, digital inclusion, innovation, and technology as funding decisions reflect a community's support for broadband deployment and digital equity. The use of public assets sub-category will ask about accessible inventory of public assets, regulations providing for fair use of assets, and processes enabling use and promoting accountability.

The use category will include questions about a community's use of broadband applications in the following areas: Government services and public safety; economic development and innovation; and education and health. The government services and public safety sub-category will ask about e-government services, citizen engagement, safety communications, and network resilience and reliability. The economic development and innovation sub-category will ask about workforce development. The education and health sub-category will ask about student device ownership and support; broadband capacity to schools and libraries; electronic health records; telemedicine; and broadband capacity and connections to hospitals and clinics.

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[1] The White House, Office of the Press Secretary, *Presidential Memorandum—Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* (May 23, 2015), available at *https://www.whitehouse.gov/the-press-office/2015/03/23/presidential-memorandum-expanding-broadband-deployment-and-adoption-addr.*

[2] Broadband Opportunity Council, *Report and Recommendations Pursuant to the Presidential Memorandum on Expanding Broadband Deployment and Adoption by Addressing Regulatory Barriers and Encouraging Investment and Training* (Aug. 20, 2015) at 12, available at *https://www.ntia.doc.gov/files/ntia/publications/broadband_opportunity_council_report_final.pdf.*

[3] *Id.* at 19. The report tasked NTIA, in collaboration with the National Economic Council, to "convene stakeholders to design and launch a community connectivity index."

Description of Proposed Use

The community connectivity self-assessment tool will capture local information about broadband access, digital inclusion, adoption, policies, and priorities. The self-assessment tool will use the information input by the community leaders in combination with existing information from national data sources to create a report targeted to the needs of the local community. The resulting report will present the information that is relevant to the local community and provide recommendations for action along with references to BroadbandUSA and other resources. NTIA intends to use this self-assessment to support communities as they consider investments and actions to further align broadband access with community priorities.

A primary strategy for reducing respondents' burden in the self-assessment tool is to create the reports using existing national data sources, which may include data from the American Communities Survey produced by the U.S. Census Bureau and Broadband Deployment and Subscription data collected by the Federal Communications Commission.

II. Method of Collection

This will be administered as a voluntary online tool for communities.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission; new collection.

Affected Public: State, regional, local, and tribal government organizations.

Frequency: Annually.

Number of Respondents: 500.

Average Time per Response: 12 hours.

Estimated Total Annual Burden Hours: 6,000.

Estimated Total Annual Cost to Public: $406,730.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: June 22, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–15149 Filed 6–27–16; 8:45 am]

BILLING CODE P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 21 July 2016, at 9:00 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *www.cfa.gov.* Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated 17 June 2016, in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2016–14992 Filed 6–27–16; 8:45 am]

BILLING CODE M

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Uniform Formulary Beneficiary Advisory Panel ("the Panel").

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Panel's charter is being renewed pursuant to 10 U.S.C. 1074g(c) and in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102-3.50(d). The Panel's charter and contact information for the Panel's Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/.*

The Panel provides the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Personnel and Readiness, independent advice and recommendations on the development of the uniform formulary. The Secretary of Defense shall consider the comments of the Panel before implementing the uniform formulary or implementing changes to the uniform formulary.

The Panel is composed of no more than 15 members that include members that represent: Non-governmental organizations and associations that represent the views and interest of a large number of eligible covered beneficiaries; contractors responsible for the TRICARE retail pharmacy program; contractors responsible for the national mail-order pharmacy program; and TRICARE network providers. All members of the Panel are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official Panel-related travel and per diem, Panel members serve without compensation.

The public or interested organizations may submit written statements to the Panel membership about the Panel's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Panel. All written statements shall be submitted to the DFO for the Panel, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 23, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15318 Filed 6–27–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0077]

Agency Information Collection Activities; Comment Request; Form for Maintenance-of Effort Waiver Requests Under the Elementary and Secondary Education Act of 1965, as Amended

AGENCY: Department of Education (ED), Office of Elementary and Secondary Education (OESE)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0077. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–349, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Matthew Stern, 202–453–6451.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Form for Maintenance-of Effort Waiver Requests Under the Elementary and Secondary Education Act of 1965, as amended.

OMB Control Number: 1810–0693.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20.

Total Estimated Number of Annual Burden Hours: 1,600.

Abstract: Section 8521(a) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA) provides that a local educational agency (LEA) may receive funds under title I, part A and other ESEA "covered programs" for any fiscal year only if the State educational agency (SEA) finds that either the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year. This provision is the maintenance of effort (MOE) requirements for LEAs under the ESEA.

The purpose of this extension request is to renew approval for the MOE waiver form; this MOE waiver form has been updated to reflect the statutory changes in the ESEA, as amended by the Every Student Succeeds Act. ED believes that the proposed form, which is slightly modified from the currently approved version, will enable an SEA to provide the information needed in an efficient manner. This collection includes burden at the SEA level.

Dated: June 23, 2016.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–15315 Filed 6–27–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, July 20, 2016; 5:00 p.m.

ADDRESSES: Tonopah Convention Center, 301 Brougher Avenue, Tonopah, Nevada 89049.

FOR FURTHER INFORMATION CONTACT: Barbara Ulmer, Board Administrator, 232 Energy Way, M/S 167, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–2025 or Email: *NSSAB@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Briefing and Recommendation Development for Air Monitoring Stations at Tonopah Test Range—Work Plan Item #4

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Barbara Ulmer at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Barbara Ulmer at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments can do so during the 15 minutes allotted for public comments.

Minutes: Minutes will be available by writing to Barbara Ulmer at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on June 22, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–15231 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 10–111–LNG; 14–105–NG; 12–97–LNG; et al.]

Orders Granting Authority To Import and Export Natural Gas, To Import and Export Liquefied Natural Gas, To Vacate Authorization, To Amend, To Deny Rehearing, and To Grant Rehearing During May 2016

	FE Docket Nos.
SABINE PASS LIQUEFACTION, LLC	10–111–LNG
BTG PACTUAL COMMODITIES (US) LLC	14–105–NG
CHENIERE MARKETING, LLC AND CORPUS CHRISTI LIQUEFACTION, LLC	12–97–LNG
SABINE PASS LIQUEFACTION, LLC	13–30–LNG; 13–42–LNG; 13–121–LNG
BOSTON GAS COMPANY d/b/a NATIONAL GRID	16–50–LNG
SANTA FE GAS LLC	16–45–NG
SANTA FE GAS LLC	16–45–NG
NORTHWEST NATURAL GAS COMPANY	16–47–NG
THE NARRAGANSETT ELECTRIC COMPANY d/b/a NATIONAL GRID	16–49–LNG
CHENIERE MARKETING	16–29–LNG
S.D. SUNNYLAND ENTERPRISES, INC	16–61–LNG
PAA NATURAL GAS STORAGE ULC	16–53–NG
FLINT HILLS RESOURCES, LP	15–168–LNG
ENGELHART CTP (US)	16–54–NG
IRVING OIL TERMINALS INC	16–56–CNG
STABILIS ENERGY SERVICES LLC	16–57–LNG
NEW YORK STATE ELECTRIC & GAS COPORATION	16–60–NG
HOUSTON PIPE LINE COMPANY LP	16–62–NG
VIRGINIA POWER ENERGY MARKETING, INC	16–59–NG
SACRAMENTO MUNICIPAL UTILITY DISTRICT	16–58–NG
SANTA FE GAS LLC	16–63–NG
ATLANTIC POWER ENERGY SERVICES (US) LLC	16–65–NG
CHEVRON U.S.A. INC	16–66–LNG
UNITED ENERGY TRADING AND CANADA ULC	16–26–NG 14–39–NG
SABINE PASS LIQUEFACTION, LLC	15–63–LNG

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during May 2016, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to vacate authority, to amend, to deny rehearing, and to grant rehearing. These orders are summarized in the attached appendix and may be found on the FE Web site at *http://energy.gov/fe/listing-doefe-authorizationsorders-issued-2016.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation and International Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on June 22, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

Appendix

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

2961–C	05/04/16	10–111–LNG	Sabine Pass Liquefaction, LLC.	Order 2961–C Amending Orders 2961–A and 2961–B.
3496–A	05/17/16	14105–NG	BTG Pactual Commodities (US) LLC.	Order 3496–A granting blanket authority to import/export natural gas from/to Canada/Mexico and vacating prior authority in Order 3496.
3638–A	05/26/16	12–97–LNG	Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC.	Order 3638–A denying Request for Rehearing of Order granting long-term, multi-contract authority to export LNG by vessel from the Proposed Corpus Christie Liquefaction Project to located in Corpus Christi, Texas, to Non-free Trade Agreement Nations.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

3669–A	05/26/16	13–30–LNG; 13–42–LNG; 13–121–LNG (consolidated).	Sabine Pass Liquefaction, LLC.	Order 3669–A denying Request for Rehearing of Order granting long-term, multi-contract authority to export LNG by vessel from the Sabine Pass LNG Terminal located in Cameron and Calcasieu Parishes, Louisiana, to Non-free Trade Agreement Nations.
3819	05/12/16	16–50–LNG	Boston Gas Company d/b/a National Grid.	Order 3819 granting long-term authority to export LNG from Canada by truck.
3820	05/02/16	16–45–NG	Santa Fe Gas LLC	Order 3820 granting blanket authority to import/export natural gas from/to Mexico.
3820–A	05/20/16	16–45–NG	Santa Fe Gas LLC	Order 3820–A vacating order 3810 granting blanket authority to import/export natural gas from/to Canada.
3823	05/12/16	16–47–NG	Northwest Natural Gas Company.	Order 3823 granting blanket authority to import/export natural gas from/to Canada.
3824	0512/16	16–49–LNG	The Narragansett Electric Company d/b/a National Grid.	Order 3824 granting long-term authority to export LNG from Canada by truck.
3825	05/26/16	16–29–LNG	Cheniere Marketing, LLC.	Order 3825 granting blanket authority to export previously imported LNG by vessel.
3826	05/24/16	16–61–LNG	S.D. Sunnyland Enterprises, Inc.	Order 3826 granting blanket authority to import LNG from various international sources by vessel and to export LNG to Canada by vessel.
3828	05/16/16	16–53–NG	PAA Natural Gas Storage ULC.	Order 3828 granting blanket authority to import/export natural gas from/to Canada.
3829	05/20/16	15–168–LNG	Flint Hills Resources, LP.	Order 3829 granting long-term Multi-contract authority to export LNG in ISO Containers and in Bulk Loaded at the Stabilis LNG Eagle Ford Facility in George West, Texas, and exported by vessel to Non-free Trade Agreement Nations.
3830	05/17/16	16–54–NG	Engelhart Ctp (US)	Order 3830 granting blanket authority to import/export natural gas from/to Canada/Mexico and vacating prior authority in Order 3496.
3831	05/19/16	16–56–CNG	Irving Oil Terminals Inc	Order 3831 granting blanket authority to import/export compressed natural gas from/to Canada by truck.
3832	05/19/16	16–57–LNG	Stabilis Energy Services LLC.	Order 3832 granting blanket authority to import/export LNG from/to Canada/Mexico by truck.
3833	05/20/16	16–60–NG	New York State Electric & Gas Corporation.	Order 3833 granting blanket authority to import/export natural gas from/to Canada/Mexico.
3834	05/20/16	16–62–NG	Houston Pipe Line Company LP.	Order 3834 granting blanket authority to import/export natural gas from/to Mexico.
3835	05/20/16	16–59–NG	Virginia Power Energy Marketing, Inc.	Order 3835 granting blanket authority to import/export natural gas from/to Canada.
3836	05/20/16	16–58–NG	Sacramento Municipal Utility District.	Order 3836 granting blanket authority to import/export natural gas from/to Canada.
3837	05/20/16	16–63–NG	Santa Fe Gas LLC	Order 3837 granting blanket authority to import/export natural gas from/to Mexico.
3838	05/26/16	16–65–NG	Atlantic Power Energy Services (US) LLC.	Order 3838 granting blanket authority to import/export natural gas from/to Canada.
3839	05/26/16	16–66–LNG	Chevron U.S.A. Inc	Order 3839 granting blanket authority to import LNG from various international sources by vessel.
3840; 3425–A	05/26/16	16–26–NG; 14–39–NG	United Energy Trading and Canada ULC.	Orders 3840 and 3425–A granting blanket authority to import/export natural gas from/to Canada and vacating prior authority.
Unnumbered Order	05/10/16	15–63–LNG	Sabine Pass Liquefaction, LLC.	Unnumbered Order granting Request for Rehearing and Motion for Leave to Answer for the Purpose of Further Consideration.

[FR Doc. 2016–15314 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The

Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 21, 2016, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Jennifer Woodard, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jennifer Woodard as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jennifer Woodard at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Jennifer Woodard at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2016_meetings.htm.*

Issued at Washington, DC, on June 22, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–15232 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 14–179–LNG]

Pieridae Energy (USA), Ltd.; Pieridae Energy (US) Ltd. Statement Regarding Change in Control

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of change in control.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of a notice and statement regarding change in control, filed December 18, 2015 (Statement),[1] by Pieridae Energy (US) Ltd. (Pieridae US). The Statement is intended to inform DOE/FE about a change in control of the upstream ownership of Pieridae US and to amend its application for authority to export liquefied natural gas in this proceeding. The Statement was filed under section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717b.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed using procedures detailed in the Public Comment Procedures section of this Notice no later than 4:30 p.m., Eastern time, July 13, 2016.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Benjamin Nussdorf, U.S. Department of Energy (FE–34), Office of Regulation and International Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–7893.

Edward Myers, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Summary of Change in Control

As noted above, the Statement is intended to inform DOE/FE about a change in control of the upstream ownership of Pieirdae US and to amend its pending LNG export application. According to the Statement, Pieridae US has been and remains wholly-owned by Pieridae Energy Limited (Pieridae) and CEX Atlantic Holdings Ltd. (CEX Atlantic) owns 1,669,411 shares of Pieridae, representing approximately 10.77% of all of the shares of Pieridae then issued and outstanding. Pieridae US further states that CEX Atlantic is controlled, directly or indirectly, by Kicking Horse Energy Inc. According to the Statement, on December 1, 2015, ORLEN Upstream Canada Ltd. (Orlen Upstream) acquired all of the issued and outstanding shares of Kicking Horse Energy Inc., thereby acquiring indirect ownership of the 1,669,411 shares of Pieridae held by CEX Atlantic. Pieridae US states that ORLEN Upstream Canada is a Canadian corporation, which is wholly-owned by PKN ORLEN S.A. a corporation whose shares are listed on the Warsaw Stock Exchange.[2] Additional details can be found in the Statement, posted on the DOE/FE Web site at *http://energy.gov/sites/prod/files/2015/12/f27/CIC%20and%20Amend.pdf.*

DOE/FE Evaluation

DOE/FE will review the Statement in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to

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[1] Pieridae Energy (US) Ltd., Notice and Statement of Change in Control and Amendment to Application, FE Docket No. 14–179–LNG (Dec. 18, 2016).

[2] Pieridae US is advised that its described change in control may also require the approval of the Committee on Foreign Investment in the United States (CFIUS). DOE expresses no opinion regarding the need for review by CFIUS. Further information may be obtained at: *http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx.*

Import or Export Natural Gas (CIC Revised Procedures).[3] Consistent with the CIC Revised Procedures, this Notice addresses only the Pieridae proceeding in which final authorizations have been issued to export LNG to non-FTA countries. The affected proceeding is DOE/FE Docket No. 14–179–LNG. If no interested person protests the change in control and DOE takes no action on its own motion, the change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorization inconsistent with the public interest.

Public Comment Procedures

Interested persons will be provided 15 days from the date of publication of this Notice in the **Federal Register** in order to move to intervene, protest, and answer the Statement. Protests, motions to intervene, notices of intervention, and written comments are invited in response to this Notice only as to the proposed change in control described in the Statement.[4] All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Preferred method: emailing the filing to *fergas@hq.doe.gov,* with the individual FE Docket Number(s) in the title line, or Pieridae Change in Control in the title line to include all applicable dockets in this Notice; (2) mailing an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation and International Engagement at the address listed in **ADDRESSES**. All filings must include a reference to the individual FE Docket Number(s) in the title line, or Pieridae Change in Control in the title line to include all applicable dockets in this Notice. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

The Statement and any filed protests, motions to intervene or notice of interventions, and comments are available for inspection and copying in the Office of Regulation and International Engagement docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. These documents are also available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on June 21, 2016.

John A. Anderson,

Director, Office of Regulation and International Engagement, Office of Oil and Natural Gas.

[FR Doc. 2016–15319 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

President's Council of Advisors on Science and Technology

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of partially-closed meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a partially-closed meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: July 13, 2016; 9:30 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held at the National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC in the Lecture Room.

FOR FURTHER INFORMATION CONTACT: Information regarding the meeting agenda, time, location, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.* A live video webcast and an archive of the webcast after the event are expected to be available at *http://whitehouse.gov/ostp/pcast.* The archived video will be available within one week of the meeting. Questions about the meeting should be directed to Ms. Jennifer Michael at *jmichael@ostp.eop.gov,* (202) 395–4444. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House, cabinet departments, and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast.* PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

Type of Meeting: Open and Closed.

Proposed Schedule and Agenda: The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on July 13, 2016 from 9:30 a.m. to 12:00 p.m.

Open Portion of Meeting: During this open meeting, PCAST is scheduled to discuss its study's on forensics and biological defense. They will also hear from speakers who will remark on and hearing aids and hearing technologies. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast.*

Closed Portion of the Meeting: PCAST will hold a closed meeting of approximately one hour to have a discuss its "Action Needed to Protect Against Biological Attack" report on July 13, 2016, which must take place in a secure location. PCAST may hold a closed meeting of approximately 1 hour with the President on July 13, 2016, which must take place in the White House for the President's scheduling convenience and to maintain Secret Service protection. This meeting will be closed to the public because such portion of the meeting is likely to disclose matters that are to be kept secret in the interest of national defense or foreign policy under 5 U.S.C. 552b(c)(1).

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[3] 79 FR 65541 (Nov. 5, 2014).

[4] Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings, as described herein.

Public Comments: It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on July 13, 2016 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast.* This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

Oral Comments: To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast,* no later than 12:00 p.m. Eastern Time on July 8, 2016. Phone or email reservations will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 15 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee. Speakers are requested to bring at least 25 copies of their oral comments for distribution to the PCAST members.

Written Comments: Although written comments are accepted continuously, written comments should be submitted to PCAST no later than 12:00 p.m. Eastern Time on July 8, 2016 so that the comments may be made available to the PCAST members prior to this meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled "Connect with PCAST."

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST Web site.

Meeting Accommodations: Individuals requiring special accommodation to access this public meeting should contact Ms. Jennifer Michael at least ten business days prior to the meeting so that appropriate arrangements can be made.

Issued in Washington, DC, on June 21, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–15235 Filed 6–27–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD16–18–000]

Competitive Transmission Development Technical Conference; Further Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued on March 17, 2016, and the Supplemental Notice of Technical Conference and Request for Speakers issued on May 10, 2016, the Federal Energy Regulatory Commission will hold a Commissioner-led technical conference on June 27, 2016, from approximately 1 p.m. to 5 p.m., and on June 28, 2016, from approximately 9 a.m. to 5 p.m., at the Commission's headquarters at 888 First Street, NE., Washington, DC 20426. The purpose of the technical conference is to discuss issues related to competitive transmission development processes, including, but not limited to, the use of cost containment provisions, the relationship of competitive transmission development to transmission incentives, and other ratemaking issues.[1] In addition, participants will have the opportunity to discuss issues relating to interregional transmission coordination and regional transmission planning as well as other transmission development issues.[2]

An updated Agenda for the technical conference, including speakers, is attached.

The conference will be open for the public to attend. Information on the technical conference will also be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. Advance registration is not required but is encouraged. Attendees may register at the following Web page: *https://www.ferc.gov/whats-new/registration/06-27-16-form.asp.*

This event will be webcast and transcribed. Anyone with internet access can navigate to the "FERC Calendar" at *www.ferc.gov,* and locate the technical conference in the Calendar of Events. Opening the technical conference in the Calendar of Events will reveal a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.capitolconnection.org* or call 703–993–3100. The webcast will be available on the Calendar of Events at *www.ferc.gov* for three months after the conference. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700).

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–502–8659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Interested parties may submit post-technical conference comments for consideration in Docket No. AD16–18–000.

While this conference is not for the purpose of discussing specific cases, we note that the discussions at the conference may address matters at issue in the following Commission proceedings that are either pending or within their rehearing period:

	Docket Nos.
ISO New England Inc	RT04–2 & ER09–1532
Midwest Independent Transmission System Operator, Inc.	ER11–1844
Northern Indiana Public Service Company v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.	EL13–88
New York Independent System Operator, Inc.	ER13–102
PJM Interconnection, L.L.C	ER13–1924
PJM Interconnection, L.L.C	ER13–1942
PJM Interconnection, L.L.C	ER13–1944
PJM Interconnection, L.L.C	ER13–1945
PJM Interconnection, L.L.C	ER14–972
PJM Interconnection, L.L.C	ER14–1485
Xcel Energy Southwest Transmission Co., LLC.	ER14–2751
Consolidate Edison Company of New York, Inc. v. PJM Interconnection, L.L.C.	EL15–18
Linden VFT, LLC v. PJM Interconnection, L.L.C.	EL15–67
TranSource, LLC v. PJM Interconnection, L.L.C.	EL15–79

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[1] Topics to be discussed include, but are not limited to, those that the Commission described in *NextEra Energy Transmission West, LLC,* 154 FERC ¶ 61,009, at PP 76–78 (2015) and *ITC Grid Development, LLC,* 154 FERC ¶ 61,206, at P 49 (2016).

[2] *See Northern Indiana Public Service Co.* v. *Midcontinent Independent System Operator, Inc. and PJM Interconnection L.L.C.,* 155 FERC ¶ 61,058, at P 54 (2016).

	Docket Nos.
Delaware Public Service Commission and Maryland Public Service Commission v. PJM and Certain Transmission Owners Designated Under Attachment A to the Consolidated Transmission Owners Agreement.	EL15–95
San Diego Gas & Electric Company.	EL15–103
New York Transco, LLC	ER15–572
PJM Interconnection, L.L.C ...	ER15–1344
PJM Interconnection, L.L.C ...	ER15–1387
New York Independent System Operator, Inc.	ER15–2059
NextEra Energy Transmission West, LLC.	ER15–2239
PJM Interconnection, L.L.C ...	ER15–2562
PJM Interconnection, L.L.C ...	ER15–2563
Southwestern Public Service Co. and Xcel Energy Southwest Transmission Co., LLC.	EC16–64
Pacific Gas and Electric Company.	EL16–47
DesertLink, LLC	EL16–68
Boundless Energy NE., LLC v. New York Independent System Operator, Inc.	EL16–84
New York Independent System Operator, Inc.	ER16–120
PJM Interconnection, L.L.C ...	ER16–453
PJM Interconnection, L.L.C ...	ER16–736
New York Independent System Operator, Inc.	ER16–835
New York Independent System Operator, Inc.	ER16–966
PJM Interconnection, L.L.C ...	ER16–1232
PJM Interconnection, L.L.C ...	ER16–1335
PJM Interconnection, L.L.C ...	ER16–1499
Midcontinent Independent System Operator, Inc.	ER16–1534

For more information about this technical conference, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *sarah.mckinley@ferc.gov*

David Tobenkin (Technical Information), Office of Energy Policy and Innovation, (202) 502–6445, *david.tobenkin@ferc.gov*

Zeny Magos (Technical Information), Office of Energy Market Regulation, (202) 502–8244, *zeny.magos@ferc.gov*

Erica Siegmund Hough (Legal Information), Office of General Counsel, (202) 502–8251, *erica.siegmund@ferc.gov*

Dated: June 20, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–15197 Filed 6–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL16–88–000]

La Paloma Generating Company, LLC v. California Independent System Operator Corporation; Notice of Complaint

Take notice that on June 17, 2016, pursuant to sections 206 and 306 of the Federal Power Act[1] and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure,[2] La Paloma Generating Company, LLC (La Paloma or Complainant) filed a formal complaint against California Independent System Operator Corporation (CAISO or Respondent). In its complaint, La Paloma is requesting that the Commission issue an order requiring CAISO to grant a Reliability Must Run designation effective as of July 1, 2016 for Units 1, 3, and 4, or otherwise provide a mechanism for cost recovery to allow La Paloma to continue operation of those units, as more fully explained in the complaint.

The Complainant states that copies of the complaint were served on representatives of the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 7, 2016.

Dated: June 21, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–15195 Filed 6–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1878–000]

Ringer Hill Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ringer Hill Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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[1] 16 U.S.C. 824e, 825h (2012).

[2] 18 CFR 385.206 (2015).

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15277 Filed 6–27–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1934–000]

Drift Marketplace, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Drift Marketplace, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 7, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 17, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15281 Filed 6–27–16; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2016.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Citizens National Corporation, Wisner, Nebraska;* to acquire up to an additional 0.95 percent for a total of 35.50 percent of the voting shares of Republic Corporation, and thereby indirectly acquire control of United Republic Bank, both of Omaha, Nebraska.

Board of Governors of the Federal Reserve System, June 23, 2016.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–15265 Filed 6–27–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0193; Docket No. 2016–0053; Sequence 33]

Submission for OMB Review; Prohibition on Contracting With Corporations With Delinquent Taxes or a Felony Conviction

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement regarding Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction. A notice and request for comments was published in the **Federal Register** at 80 FR 75903 on December 4, 2015, as part of an interim rule under FAR case 2015–011. No

public comments were received on the information collection.

DATES: Submit comments on or before July 28, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching OMB control number 9000–0193. Select the link "Comment Now" that corresponds with "Information Collection 9000–0193, "Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction." Follow the instructions provided on the screen. Please include your name, company name (if any), and "Information Collection 9000–0193, Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0193, Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction.

Instructions: Please submit comments only and cite Information Collection 9000–0193, Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Federal Acquisition Policy Division, GSA, at 202–501–1448 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Offerors responding to a Federal solicitation are required to make a representation regarding whether the offeror is a corporation with a delinquent tax liability or a felony conviction under Federal law, as required by section 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235).

When an offeror provides an affirmative response in paragraph (c)(1) or (2) to the representation, the contracting officer is required to request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The contracting officer shall not make an award to the corporation unless the agency suspending or debarring official has considered suspension or debarment of the corporation and determined that this further action is not necessary to protect the interests of the Government.

This rule also added a certification requirement regarding tax matters, in solicitations for which the resultant contract (including options) may have a value greater than $5,000,000, and that will use funds made available by section 523 of the Commerce, Justice, Science, and Related Agencies Appropriations Act, 2014 (Division B) of Public Law 113–235, or under subsequent appropriations acts that contain the same provisions.

Agencies funded by these acts include the Department of Commerce, the Department of Justice, NASA, as well as some smaller agencies.

If the certification regarding tax matters is applicable, then the contracting officer shall not award any contract in an amount greater than $5,000,000, unless the offeror affirmatively certified in its offer to all the required certifications regarding tax matters in 52.209–XX(c) or 52.212–3(q)(3).

B. Annual Reporting Burden

Needs and Uses: This requirement provides for the collection of information required to implement sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and section 523 of Division B of the same act.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 352,000.

Responses per Respondent: 1.01 (approximately).

Annual Responses: 356,840.

Average Burden per Response: .1.

Annual Burden Hours: 35,684.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20404, telephone 202–501–4755.

Please cite OMB Control No. 9000–0193, Prohibition on Contracting with Corporations with Delinquent Taxes or a Felony Conviction, in all correspondence.

Dated: June 22, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2016–15204 Filed 6–27–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From the UM–JMH Center for Patient Safety PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, 73 FR 70732–70814, provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from the UM–JMH Center for Patient Safety PSO of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on June 12, 2016.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.ahrq.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 5600 Fishers Lane, Room 06N94B, Rockville, MD 20857; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be "delisted" if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from the UM–JMH Center for Patient Safety PSO, a component entity of the University of Miami, PSO number P0096, to voluntarily relinquish its status as a PSO. Accordingly, the UM–JMH Center for Patient Safety PSO was delisted effective at 12:00 Midnight ET (2400) on June 12, 2016.

The UM–JMH Center for Patient Safety PSO has patient safety work product (PSWP) in its possession. The PSO will meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule regarding notification to providers that have reported to the PSO. In addition, according to sections 3.108(c)(2)(ii) and 3.108(b)(3) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov.*

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2016–15226 Filed 6–27–16; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Health Insurance Assistance Program (SHIP) Client Contact Form, Public and Media Activity Report Form, and Resource Report Form

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by July 28, 2016.

ADDRESSES: Submit written comments on the collection of information by email to *Philip.Mckoy@acl.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Phillip Mckoy at 202.795.7397 or email: *Phillip.Mckoy@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance.

Grantees are required by Congress to provide information for use in program monitoring and for Government Performance and Results Act (GPRA) purposes. This information collection reports Client Contact Form, Public and Media Activity Report Form, and Resource Report Form, which have been used to collect data to evaluate program effectiveness and improvement. This information is used as the primary method for monitoring the SHIP Projects. ACL estimates the burden of this collection of information as follows: Respondents: 54 SHIP grantees at 18 hours per month (216 hours per year, per grantee). Total Estimated Burden Hours: 11,664 hours per year.

Dated: June 20, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–15308 Filed 6–27–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Notice of Federal Review of the Oklahoma Disability Law Center (ODLC)

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: Representatives of the Administration on Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL), will be conducting a federal review of the Oklahoma Disability Law Center (ODLC) on August 16–18, 2016.

AIDD is soliciting comments from interested parties on your experiences with the work, program, and strategies employed by ODLC in meeting the needs of individuals with developmental disabilities and their families in Oklahoma. You are encouraged to share your experiences by way of any of the following methods:

Email: Clare.Barnett@acl.hhs.gov.

Telephone: 202–795–7301.

Mail Comments to: Clare Barnett Huerta, Program Specialist, Administration on Intellectual and Developmental Disabilities, Administration for Community Living, 330 C Street SW., 1st Floor, Washington, DC 20201.

Comments should be received by August 18, 2016 in order to be included in the final report.

FOR FURTHER INFORMATION CONTACT: Clare Barnett Huerta, Administration for Community Living, Administration on Intellectual and Developmental Disabilities, Office of Program Support, 330 C Street SW., 1st Floor, Washington, DC 20201, 202–795–7301.

Dated: June 21, 2016.

Kathy Greenlee,

Administrator & Assistant Secretary for Aging.

[FR Doc. 2016–15313 Filed 6–27–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; State Health Insurance Assistance (SHIP) Program National Beneficiary Survey

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on ACL's intention to collect information from the public related to the State Health Insurance Assistance (SHIP) Program. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Submit written comments on the collection of information by August 29, 2016.

ADDRESSES: Submit electronic comments on the collection of information to *Katherine.Glendening@acl.hhs.gov.* Submit written comments on the collection of information to *Katherine Glendening,* U.S. Administration for Community Living, 330 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening, 202–795–7350.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

Proposed Collection: Evaluation of the State Health Insurance Assistance Program (SHIP), U.S. Department of Health and Human Services (HHS), U.S. Administration for Community Living (ACL).

Need and Use of Information Collection: The SHIP Customer Satisfaction Survey is a survey of individuals who meet with State Health Insurance Assistance Program (SHIP) Counselors to better understand their Medicare options. SHIP provides free, one-on-one counselling to the public, and the SHIP Customer Satisfaction Survey will be used to measure an individual's satisfaction with his/her counselling experience.

The State Health Insurance Assistance Program (SHIP) was created under Section 4360 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101–508). SHIP was created to provide grant funding to states, who in turn provide ". . . information, counseling, and assistance . . . to individuals who are eligible to receive benefits under title XVIII of the Social Security Act" (Medicare). SHIP grants help Medicare beneficiaries and their families obtain information about topics such as Medicare enrollment (Parts A and B), Medicare Advantage plans (Part C), prescription drug coverage (Part D), Medicare Savings Programs (MSPs), supplemental insurance policies (Medigap), Medicaid, and other health benefits questions and issues. The survey will gauge individuals' satisfaction with the services provided by SHIP counselors. While the SHIP program currently tracks the number of contacts the program makes with individual citizens, as well as descriptive information about counseling sessions such as topic, location, and beneficiary demographics, the program does not track outcome measurements including customer satisfaction.

The SHIP survey will be conducted over a three-year period beginning in Fiscal Year 2017 (FY17), with sites in each of the 50 states, the District of Colombia and the territories of Guam, Puerto Rico and the U.S. Virgin Islands being surveyed once during the three-year period. Results from the surveys will be used to understand satisfaction among individuals who receive SHIP Medicare assistance/counseling, as well, as how the program can be improved to provide better service to its target population. Eighteen (18) unique states will be surveyed in FY17, with each state expected to generate 75 unique responses, for a total of 1,350 individual responses in Year 1. This process will then be replicated in Year 2 (FY18) and Year 3 (FY19), with a different unique group of 18 states and territories being surveyed each year. By the end of FY19, SHIP will obtain 4,050 completed surveys to measure satisfaction at the state and national levels (18 states × 75 responses per state × 3 years).

SHIP will use the following factors to draw a representative sample of beneficiaries who received assistance/counseling:

- Review counseling sessions at two points each year:
  - ○ One week in the spring (outside of the annual Medicare Open Enrollment Period)
  - ○ One week in the fall (during the annual Medicare Open Enrollment Period)
- Focus only on non-redundant individuals (*i.e.,* a random sample without replacement of individuals who receive SHIP counseling).
- Randomly select 18 states and territories to be surveyed each year, with the states stratified by data collection method* and the size of the Medicare-eligible population.

* Data collection method refers to how each state collects and enters its records of counseling sessions. The majority of states (29 of 54) directly enter counseling records into SHIP's NPR reporting system, but the remaining states upload data in batches at the end of each month. To ensure that the batch upload states will be able to pull weekly samples twice per year, we will limit these states to Years 2 and 3 of the survey administration period, thereby allowing for technical assistance to these states, if necessary.

To generate a sample with a 95% confidence level at the national level 400 responses will be required (n = 3,000,000 counseling sessions in 2015). SHIP anticipates collecting 75 completed surveys per state, for a total collection of 4,050 completed surveys. This larger collection will enable ACL to make state-to-state comparisons, which is an important feature of this survey. It will also provide each state with sufficient information to take local action to improve service within budgetary constraints.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The average annual burden associated with these activities is summarized below:

Respondent type	Number of respondents	Responses per respondent	Average burden hours per response (hours)	Total average annual burden (hours)
Stratified Random Sample	1,350	1	*8	180

* Minutes.

Dated: June 21, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–15307 Filed 6–27–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; OAA Title III–E Evaluation

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written or electronic comments on the collection of information by August 29, 2016.

ADDRESSES: Submit written comments on the collection of information to Susan Jenkins at *Susan.Jenkins@ACL.HHS.Gov.*

FOR FURTHER INFORMATION CONTACT: Susan Jenkins, 202–795–7369.

SUPPLEMENTARY INFORMATION: In compliance with PRA (44 U.S.C. 3501–3520), the Administration for Community Living (ACL, formerly the Administration for Aging) has submitted the following proposed collection of information to the Office of Management and Budget (OMB) for review and clearance.

The Administration for Community Living/Administration on Aging (ACL/AoA) is requesting approval from the Office of Management and Budget (OMB) for data collection associated with the *Process Evaluation and Special Studies Related to the Long-Term Care Ombudsman Program (LTCOP)* (Contract #HHSP233201500048I). The goal of the LTCOP is to protect and promote the health, safety, welfare, and rights of long-term care facility residents. Administered by ACL/AoA, LTCOPs operate in all 50 states, the District of Columbia, Puerto Rico, and Guam. The purpose of the process evaluation is to obtain a thorough understanding of the LTCOP's structure and operations at the national, state and local levels; use of resources to carry out legislative mandates; the nature of program partnerships; and processes for sharing information on promising program practices and areas for improvement.

The contractor will interview 12 Federal staff (60 minutes estimated burden) and national stakeholders (45–60 minutes estimated burden) and 53 State ombudsmen (75 minutes estimated burden). All 53 State ombudsmen also will be asked to complete a survey which is estimated to take 20 minutes to complete. ACL/AoA estimates contacting approximately 600 local directors/regional representatives and local representatives to complete the web-based survey. Of this number, we anticipate obtaining responses from 50 percent of the sample (300 respondents). ACL/AoA estimates contacting approximately 2,000 volunteers to complete the web-based survey. Of this number, we anticipate obtaining responses from 20 percent of the sample (400 respondents). The total burden estimate is 19779 minutes, which is 329.25 burden hours.

The proposed data collection tools may be found on the ACL Web site at: *http://www.aoa.acl.gov/Program_Results/Program_survey.aspx.*

Dated: June 21, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–15309 Filed 6–27–16; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Health Center Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of class deviations from the requirements for competition and budget amount for the Health Center Program.

SUMMARY: The Bureau of Primary Health Care has been granted class deviations.

SUPPLEMENTARY INFORMATION:

Intended Recipient of the Award: Approximately 1,380 Health Center Program award recipients.

Amount of Competitive Awards: Approximately $100 million will be awarded in FY 2016 through a one-time supplement.

Period of Supplemental Funding: Anticipated 12 month project period is September 1, 2016 through August 31, 2017.

CFDA Number: 93.224.

Authority: Section 330 of the Public Health Service Act, as amended (42 U.S.C. 254b, as amended).

Justification

Targeting the Nation's neediest populations and geographic areas, the Health Center Program supports nearly 1,400 health centers that operate approximately 9,800 service delivery sites in every state, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Basin. Nearly 23 million patients received comprehensive, culturally competent, quality primary health care services through the Health Center Program award recipients in 2014.

The Fiscal Year 2016 Quality Improvement Award funding will aim to improve the overall quality, efficiency, and value of health care service delivery programs. These awards recognize the highest clinically performing health centers nationwide as well as those health centers that have made significant quality improvement gains in the past year to build systems and processes that support ongoing quality improvement and practice redesign; increase access to comprehensive primary health care services; and recognize high value health centers that have improved quality, access, and cost. By making these investments, Health Centers will use these funds to expand current quality improvement systems and infrastructure, and improve care delivery systems to bring the highest quality primary care services to the communities they serve. HRSA-funded health centers are expected to have ongoing quality assurance and improvement programs that improve patient care and outcomes.

FOR FURTHER INFORMATION CONTACT: Matt Kozar, Strategic Initiatives and Planning Division, Director, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration at (301) 443–1034 or *mkozar@hrsa.gov.*

Dated: June 22, 2016.

James Macrae,

Acting Administrator.

[FR Doc. 2016–15208 Filed 6–27–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on May 1, 2016, through May 31, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: June 22, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Joseph Moran, Phoenix, Arizona, Court of Federal Claims No: 16–0538V
2. Carlene Schultz, East Aurora, New York, Court of Federal Claims No: 16–0539V
3. James G. McLachlan, Bellingham, Washington, Court of Federal Claims No: 16–0542V
4. Melissa Roglitz-Walker on behalf of S. W., Fort Atkinson, Wisconsin, Court of Federal Claims No: 16–0543V
5. Sandra R. Hughes, Tuscaloosa, Alabama, Court of Federal Claims No: 16–0546V

6. Guy Sterling on behalf of A. S., Vienna, Virginia, Court of Federal Claims No: 16–0551V
7. Derek Bailey on behalf of J. B., Odenton, Maryland, Court of Federal Claims No: 16–0552V
8. Donna Williams on behalf of C. W., Atlanta, Georgia, Court of Federal Claims No: 16–0553V
9. Nancy N. Relyea, Colonie, New York, Court of Federal Claims No: 16–0555V
10. Hope O'Bannon, Rancho Cucamonga, California, Court of Federal Claims No: 16–0556V
11. Ashley Walls on behalf of K. W., Martinsburg, West Virginia, Court of Federal Claims No: 16–0557V
12. Heather Spracklen and Joe Higgins on behalf of M. H., Stillwater, Oklahoma, Court of Federal Claims No: 16–0559V
13. Richard Deckert, St. Louis, Missouri, Court of Federal Claims No: 16–0562V
14. Kenneth Craig, Lebanon, Indiana, Court of Federal Claims No: 16–0564V
15. Hunter Horsey on behalf of G. H., Clearwater, Florida, Court of Federal Claims No: 16–0565V
16. Elaine Moriarty, Plymouth Meeting, Pennsylvania, Court of Federal Claims No: 16–0566V
17. Margaret Zamora, Cleveland, Ohio, Court of Federal Claims No: 16–0567V
18. L. Nicole Moore, Tulsa, Oklahoma, Court of Federal Claims No: 16–0569V
19. Renate Davison, Aurora, Colorado, Court of Federal Claims No: 16–0571V
20. Suzanne Niedziela, Carle Place, New York, Court of Federal Claims No: 16–0572V
21. Paula Yost, Winchester, Virginia, Court of Federal Claims No: 16–0573V
22. Lincoln John and Daswattie John on behalf of K. J., Schenectady, New York, Court of Federal Claims No: 16–0574V
23. Shari Murray, Portland, Oregon, Court of Federal Claims No: 16–0575V
24. Susan Graney, Newport News, Virginia, Court of Federal Claims No: 16–0578V
25. Evangeline Stavretis, Fort Wayne, Indiana, Court of Federal Claims No: 16–0579V
26. Dolores Smoot, Cleveland, Ohio, Court of Federal Claims No: 16–0580V
27. Karie N. DuVernay on behalf of W. R. D., Charlotte, North Carolina, Court of Federal Claims No: 16–0582V
28. Josh Swan, Nashua, New Hampshire, Court of Federal Claims No: 16–0583V
29. Rebecca Schleif, Baraboo, Wisconsin, Court of Federal Claims No: 16–0584V
30. Linda Bailey, Charleston, West Virginia, Court of Federal Claims No: 16–0585V
31. Nancy Tyree, White Plains, Maryland, Court of Federal Claims No: 16–0586V
32. Timothy Selling, Scottsdale, Arizona, Court of Federal Claims No: 16–0588V
33. Jeffrey Schafer, Ravenna, Ohio, Court of Federal Claims No: 16–0593V
34. Patricia Miller, Beverly Hills, California, Court of Federal Claims No: 16–0595V
35. Leah Mims and Donelle Mims on behalf of J. M., Deceased, Stone Mountain, Georgia, Court of Federal Claims No: 16–0596V
36. Robert Rhodes, Greensboro, North Carolina, Court of Federal Claims No: 16–0597V
37. Teresa Polzin, Linwood, New Jersey, Court of Federal Claims No: 16–0598V
38. Eric Heagney, Asheville, North Carolina, Court of Federal Claims No: 16–0601V
39. Sheila R. Young, Oneida, New York, Court of Federal Claims No: 16–0602V
40. Jeanette Eiland, Milwaukee, Wisconsin, Court of Federal Claims No: 16–0603V
41. Aileen Harris, Phoenix, Arizona, Court of Federal Claims No: 16–0604V
42. Debora Brown, San Antonio, Texas, Court of Federal Claims No: 16–0605V
43. Michele Dominianni, New City, New York, Court of Federal Claims No: 16–0606V
44. Catherine Cintron on behalf of E. C., Richmond, Virginia, Court of Federal Claims No: 16–0608V
45. Kathleen Nolan, North Tonawanda, New York, Court of Federal Claims No: 16–0609V
46. John Coleman, Dallas, Texas, Court of Federal Claims No: 16–0610V
47. Russell Green, Concord, Massachusetts, Court of Federal Claims No: 16–0612V
48. Gilmore Wright, II, Buford, Georgia, Court of Federal Claims No: 16–0615V
49. David Johnson, San Antonio, Texas, Court of Federal Claims No: 16–0616V
50. Abigail Michel, Roswell, Georgia, Court of Federal Claims No: 16–0617V
51. Melissa Goyne, Dresher, Pennsylvania, Court of Federal Claims No: 16–0619V
52. Irene Schurley, Las Vegas, Nevada, Court of Federal Claims No: 16–0621V
53. Deborah Marino, Newtown, Pennsylvania, Court of Federal Claims No: 16–0622V
54. Cheryl Zanghi, Washington, District of Columbia, Court of Federal Claims No: 16–0625V
55. Leah Soos, Washington, District of Columbia, Court of Federal Claims No: 16–0626V
56. Lauren Ochoa on behalf of Scarlet Ochoa, Deceased, Seattle, Washington, Court of Federal Claims No: 16–0627V
57. Marion Crank, Jr., Beverly Hills, California, Court of Federal Claims No: 16–0628V
58. Mary Katherine Shadix, Beverly Hills, California, Court of Federal Claims No: 16–0629V
59. Diane Scott, Beverly Hills, California, Court of Federal Claims No: 16–0630V
60. Theodore Worley, Beverly Hills, California, Court of Federal Claims No: 16–0631V
61. Melissa Larson, Baraboo, Wisconsin, Court of Federal Claims No: 16–0633V
62. Wei-Ti Chen, New Haven, Connecticut, Court of Federal Claims No: 16–0634V
63. Maxine Ward, Memphis, Tennessee, Court of Federal Claims No: 16–0635V
64. Michael Miller, Washington, District of Columbia, Court of Federal Claims No: 16–0637V
65. Jake Peters, Los Angeles, California, Court of Federal Claims No: 16–0638V
66. Sharon G. Ortagus, Palatka, Florida, Court of Federal Claims No: 16–0639V
67. Sarah Graham, Washington, District of Columbia, Court of Federal Claims No: 16–0640V
68. Ronald L. Edwards, Washington, District of Columbia, Court of Federal Claims No: 16–0641V
69. Kellie Dovre, Farmington Hills, Michigan, Court of Federal Claims No: 16–0642V
70. Jessica Brooks, Washington, District of Columbia, Court of Federal Claims No: 16–0643V
71. Joan Hudgens, Dallas, Texas, Court of Federal Claims No: 16–0644V
72. Jennifer Jefko on behalf of K.L., Chicago, Illinois, Court of Federal Claims No: 16–0645V
73. Marie O'Donnell, Sarasota, Florida, Court of Federal Claims No: 16–0646V

[FR Doc. 2016–15207 Filed 6–27–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the 2018 Physical Activity Guidelines Advisory Committee

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act (FACA), the U.S. Department of Health and Human Services (HHS) is hereby giving notice that a meeting of the 2018 Physical Activity Guidelines Advisory Committee (2018 PAGAC or Committee) will be held. This meeting will be open to the public.

DATES: The meeting will be held on July 14, 2016, from 8:30 a.m. E.D.T. to 11:30 a.m. E.D.T. and on July 15, 2016, from 8:00 a.m. E.D.T. to 3:15 p.m. E.D.T.

ADDRESSES: The meeting will be accessible by webcast on the Internet or by attendance in-person. For in-person participants the meeting will take place in the National Institutes of Health (NIH) John Edward Porter Neuroscience Research Center (PNRC), Building 35, Seminar Room 620. The facility is located at the NIH Main Campus at 9000 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2018 Physical Activity Guidelines Advisory Committee, Richard D. Olson and/or Alternate Designated Federal Officer, Katrina L. Piercy, Ph.D., R.D., Office of Disease Prevention and Health Promotion (ODPHP), Office of the Assistant Secretary for Health (OASH), HHS; 1101 Wootton Parkway, Suite LL–100; Rockville, MD 20852; Telephone: (240) 453–8280. Additional information is available at *www.health.gov/paguidelines.*

SUPPLEMENTARY INFORMATION:

Purpose: The inaugural *Physical Activity Guidelines for Americans* (PAG), issued in 2008, represents the first comprehensive guidelines on physical activity issued by the federal government. The PAG provides science-based advice on how physical activity can help promote health and reduce the risk of chronic disease. The PAG serves as the benchmark and primary, authoritative voice of the federal government for providing science-based guidance on physical activity, fitness, and health in the United States. Five years after the first edition of the PAG was released, ODPHP, in collaboration with the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the President's Council on Fitness, Sports, and Nutrition (PCFSN) led development of the *PAG Midcourse Report: Strategies to Increase Physical Activity Among Youth.* The second edition of the PAG will build upon the first edition and provide a foundation for federal recommendations and education for physical activity programs for Americans, including those at risk for chronic disease.

The Secretary of HHS approved establishment of the 2018 PAGAC as a discretionary federal advisory committee. The Committee will provide the Department with independent, science-based advice and recommendations. The 2018 PAGAC consists of a panel of experts who are selected from the private sector. Individuals who are selected to serve on the 2018 PAGAC must have current scientific knowledge in the field of human physical activity and health promotion or the prevention of chronic disease.

Appointed Committee Members: As stipulated in the charter, the 2018 PAGAC will be composed of 11–17 members. Members of the Committee are appointed by the Secretary. Information on Committee membership is available at *www.health.gov/paguidelines.*

Committee's Task: The work of the 2018 PAGAC will be time-limited and solely advisory in nature. The Committee will develop recommendations based on the preponderance of current scientific and medical knowledge using a systematic review approach. The 2018 PAGAC will examine the current PAG, take into consideration new scientific evidence and current resource documents, and develop a report to the Secretary of HHS that outlines its science-based advice and recommendations for development of the PAG, *second edition.* The Committee will hold approximately five public meetings to review and discuss recommendations. Meeting dates, times, locations, and other relevant information will be announced at least 15 days in advance of each meeting via **Federal Register** notice. As stipulated in the charter, the Committee will be terminated after delivery of its final report to the Secretary of HHS or two years from the date the charter was filed, whichever comes first.

Purpose of the Meeting: In accordance with FACA and to promote transparency of the process, deliberations of the 2018 PAGAC will occur in a public forum. At this meeting, the 2018 PAGAC will be oriented to the PAG revision process and begin its deliberations.

Meeting Agenda: The meeting agenda will include (a) review of operations for the Committee members, (b) a presentation on the history of the PAG and how they are used, (c) presentation on the literature review process, and (d) plans for future Committee work.

Meeting Registration: The meeting is open to the public. The meeting will be accessible by webcast or by attendance in-person. Pre-registration is required for both web viewing and in-person attendance. To pre-register, please visit *www.health.gov/paguidelines.* To request a special accommodation, please email *niheventapproval@mail.nih.gov.*

Webcast Public Participation: After pre-registration, individuals participating by webcast will receive webcast access information via email.

In-Person Public Participation and Building Access: For in-person participants, the meeting will be held within the National Institutes of Health (NIH) PNRC, Building 35, as noted above in the **ADDRESSES** section. Details regarding registration capacity and directions will be posted on *www.health.gov/paguidelines.* For in-person participants, check-in at the registration desk onsite at the meeting is required and will begin at 7:30 a.m. E.D.T. each day. Please note that all visitors must enter through the NIH Gateway Center, which opens at 6:00 a.m. E.D.T. You will be asked to submit to a vehicle or personal inspection and provide a government-issued ID.

Public Comments and Meeting Documents: Written comments from the public will be accepted throughout the Committee's deliberative process; opportunities to present oral comments to the Committee will be provided at a future meeting. Written public comments can be submitted and/or viewed at *www.health.gov/paguidelines* using the "Submit Comments" and "Read Comments" links, respectively. Documents pertaining to Committee deliberations, including meeting agendas and summaries will be available on *www.health.gov/paguidelines,* and meeting materials will be available for public viewing at the meeting. Meeting information, thereafter, will continue to be accessible online and upon request at the Office of Disease Prevention and Health Promotion, OASH/HHS; 1101 Wootton Parkway, Suite LL100, Tower Building; Rockville, MD 20852; Telephone: (240) 453–8280; Fax: (240) 453–8281.

Dated: June 22, 2016.

Don Wright,

Deputy Assistant Secretary for Health, (Office of Disease Prevention and Health Promotion).

[FR Doc. 2016–15206 Filed 6–27–16; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID Investigator Initiated Program Project Applications (P01).

Date: July 21, 2016.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/Room 3G31B National Institutes of Health, NIAID, 5601 Fishers Lane MSC 9823, Rockville, MD 20892, (240) 669–5060, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: June 22, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15163 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Start-up Exclusive License: Premarket Approved Diagnostic for Identifying JC Virus

AGENCY: National Institutes of Health.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209 and 37 CFR part 404, that the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a start-up exclusive license to Pro Arc Diagnostics, Inc., which is located in Missouri, to practice the inventions embodied in the following patents: U.S. Patent Application 14/408,919, filed December 17, 2014 (HHS reference E–088–2012/0–US–03).

The patent rights in these inventions have been assigned to the United States of America. The prospective start-up exclusive license territory may be worldwide and the field of use may be limited to FDA premarket approved (PMA) diagnostics for the detection of JC Virus.

DATES: Only written comments and/or applications for a license which are received by NINDS Technology Transfer on or before July 13, 2016 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, comments, and other materials relating to the contemplated start-up exclusive license should be directed to: Susan Ano, Ph.D., NINDS Technology Transfer, 31 Center Drive, Suite 8A52, MS2540, Bethesda, MD 20892; Telephone: (301) 435–5515; Email: *anos@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: This invention provides a multiplex PCR-based method for detecting JC virus, and distinguishing between the non-pathogenic and pathogenic JC virus that causes progressive multifocal leukoencephalopathy (PML) in individuals that are immunocompromised. The invention helps to identify individuals at risk of developing PML by detecting two regions of the viral genome. The assay detects JC viral DNA with high sensitivity using the T protein coding DNA that is highly specific and does not allow mutations. It also detects a genome variable region in the non-coding region that detects changes from the nonpathogenic genotype in the urine to the pathogenic type seen in tissues especially in the brain, bone marrow, plasma/serum or immune cells of PML patients.

The prospective start-up exclusive license may be granted unless within fifteen (15) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

Complete applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated start-up exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: June 21, 2016.

Susan Ano,

Technology Development Coordinator NINDS Technology Transfer, National Institutes of Health.

[FR Doc. 2016–15165 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel Systematic Review of Neonatal Medicine.

Date: August 2, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6710 B Rockledge Drive, Room 2131D, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710 B Rockledge Drive, Room 2131D, Bethesda, MD 20892, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 22, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15164 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

Date: July 6, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15321 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: B Cell Immunology Program.

Date: July 6, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS).

Dated: June 21, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15160 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Therapeutic Target for Aortic Aneurysm.

Date: July 22, 2016.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tony L. Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 22, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15162 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

Date: July 22, 2016.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropharmacology.

Date: July 22, 2016.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–435–1220, *crosland@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pilot Clinical Studies (R21) in Kidney Diseases.

Date: July 25, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Muscle Physiology.

Date: July 26, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–287: Opportunities for Collaborative Research at the NIH Clinical Center (U01).

Date: July 26, 2016.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts and Continuous Submission: Cardiovascular Function and Hypertension.

Date: July 27, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1206, *komissar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15161 Filed 6–27–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Baseline Assessment for Security Enhancement (BASE) Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0062, abstracted below to OMB for review and approval of an extension to the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on April 14, 2016, 81 FR 22093. The collection allows TSA to conduct transportation security-related assessments during site visits with surface transportation security and operating officials.

DATES: Send your comments by July 28, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Baseline Assessment for Security Enhancement (BASE) Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0062.

Forms(s): Baseline Assessment for Security Enhancement (BASE) electronic checklist.

Affected Public: Highway transportation asset owners and operators, intercity passenger rail and public transportation agencies, including mass transit bus, rail transit, commuter rail, and other, less common types of service (cable cars, inclined planes, funiculars, and automated guide way systems).

Abstract: TSA's BASE program works with existing and new transportation owner/operators to identify their current security posture, to identify security gaps, and to implement countermeasures throughout the affected surface modes of transportation by asking established questions with major transportation asset owners and operators. Data and results collected through the BASE program will inform TSA's policy and program initiatives and allow TSA to provide focused resources and tools to enhance the overall security posture within the affected surface transportation community.

Number of Respondents: 90.

Estimated Annual Burden Hours: An estimated 558 hours annually (Mass Transit/Passenger Rail—468 hours; Highway—90 hours).

Dated: June 22, 2016.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–15181 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Pipeline Corporate Security Review

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0056, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 2, 2016, 81 FR 26243. The collection encompasses interviews and site visits with pipeline owner/operators regarding company security planning and plan implementation.

DATES: Send your comments by July 28, 2016. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Pipeline Corporate Security Review (PCSR).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0056.

Forms(s): Pipeline Corporate Security Review (PCSR) Protocol Form.

Affected Public: Hazardous Liquids and Natural Gas Pipeline Industry.

Abstract: Under the Aviation and Transportation Security Act (ATSA) and delegated authority from the Secretary of Homeland Security, TSA is tasked with developing policies, strategies, and plans for dealing with transportation security. To carry out this responsibility regarding pipelines, TSA assesses current industry security practices through its PCSR program. The PCSR is a voluntary, face-to-face visit with a pipeline owner/operator during which TSA discusses an owner/operator's corporate security planning and the entries made by the owner/operator on the PCSR Form. The PCSR Form includes 218 questions concerning the owner/operator's corporate level security planning, covering security topics such as physical security, vulnerability assessments, training, and emergency communications. TSA uses the information collected during the PCSR process to determine baseline security standards, potential areas of security vulnerability, and industry "smart" practices throughout the pipeline mode.

Number of Respondents: 15 respondents annually.

Estimated Annual Burden Hours: 120 hours annually.

Dated: June 22, 2016.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2016–15169 Filed 6–27–16; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–42]

30-Day Notice of Proposed Information Collection: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 28, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 14, 2016 at 81 FR 13406.

A. Overview of Information Collection

Title of Information Collection: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Approval Number: 2502–0044.

Type of Request: Extension of currently approved collection.

Form Number: HUD–92330–A, HUD–2328, HUD–2205–A.

Description of the need for the information and proposed use: Contractors use the form HUD–2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. Contractors use the form HUD–92330–A to convey actual construction costs in a standardized format of cost certification. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, HUD–92330–A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades on form HUD–2328. This form also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. HUD–2205A is used to certify the actual costs of acquisition or refinancing of projects insured under Section 223(f) program.

Respondents: Business or other for profit. Not for profit institutions.

Estimated Number of Respondents: 1,807.

Estimated Number of Responses: 3,739.

Frequency of Response: 1.

Average Hours per Response: 19.

Total Estimated Burdens: 29,287.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 22, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–15297 Filed 6–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–27]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *Air Force:* Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; *Interior:* Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 3960 N. 56th Ave. #104, Hollywood, FL 33021; (443) 223–4639; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426 (These are not toll-free numbers).

Dated: June 23, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 07/01/2016

Suitable/Available Properties

Building

Arkansas

Former Eaker AFB Recreational Property
630 Lansing Street
Blytheville AR 72315
Landholding Agency: GSA
Property Number: 54201620026
Status: Excess
GSA Number: 7–GR–AR–0582
Comments: 45+ yrs. old; 36,000 sq. ft.; recreational; building is in disrepair; accessible by appointment only; sits on 48.73 fee acres; contact GSA for more information.

California

T1 Bar Single Wide Mobile Home
Property #2752
Somes Bar CA 95568
Landholding Agency: Agriculture
Property Number: 15201620043
Status: Unutilized
Directions: Siskiyou County along State HWY 96 Near Somes Bar; RP# 4981004 CN# 1331.003771 UAI# 1102050581004
Comments: off-site removal only; 35+ yrs. old; 717 sq. ft.; residence; 18+ mos. vacant; poor condition; contact Agriculture for more information.

Oak Bottom Single Wide Mobile
Home Property #02–2700
Somes Bar CA
Landholding Agency: Agriculture
Property Number: 15201620044
Status: Unutilized
Directions: Siskiyou County along the Salmon River Road Near Somes Bar; RP# 4980023 CN# 1375.003771 UAI# 1102050580023
Comments: off-site removal only; 42+ yrs. old; 717 sq. ft.; residence; 18+ mos. vacant; poor condition; contact Agriculture for more information.

Cima Mobile Home
Mojave National Preserve
Cima CA 92323
Landholding Agency: Interior
Property Number: 61201620013
Status: Excess
Comments: off-site removal only; 34+ yrs. old; 1,345 sq. ft.; residential; 3+ months vacant; extensive water damage; prior approval needed to gain access; contact Interior for more information.

Louisiana

Baton Rouge Depot
2695 North Sherwood Forest Drive
Baton Rouge LA 70814
Landholding Agency: GSA
Property Number: 54201620025
Status: Surplus
GSA Number: 7–G–LA–0523–AH
Directions: Baton Rouge Depot building's (Building 74—20,000 sq. ft.; Building 28—20,000 sq. ft., Building 70—2,312 sq. ft.)
Comments: 67+ yrs. old; 42,312 total sq. ft.; warehouse, storage; 8+ mos. vacant; sits on 128.50 acres of land; contact GSA for more information.

Massachusetts

3 Buildings
Nauset Light Beach Road, off Ocean View Drive
Eastham MA 02667
Landholding Agency: Interior
Property Number: 61201620014
Status: Excess
Directions: Nauset Light Beach Bathhouse (1,620 sq. ft.); Changing Room #1 & #2 (290 sq. ft. each)
Comments: off-site removal only; 30+ yrs. old; sq. footage above; bathhouse, changing rooms; 1 mo. vacant; good condition; prior approval needed to gain access; contact Interior for more information.

Nebraska

R0328001100B
71378 Road 44B
Trenton NE 69044
Landholding Agency: Interior
Property Number: 61201620017
Status: Unutilized
Comments: off-site removal only; no future agency need; 64+ yrs.-old; 229 sq. ft.; storage; 15+ months vacant; poor condition; contact Interior for more information.

Virginia

3 Buildings
226 Claven Lane
Middletown VA 22645
Landholding Agency: Interior
Property Number: 61201620016
Status: Excess
Directions: Tract 02–175—Farmhouse (1,200 sq. ft.); Tract 02–175—Barn (1,200 sq. ft.); Tract 02–175—Garage (800 sq. ft.)
Comments: off-site removal 30+ & 80+ yrs. old; residential; stables; storage; 8+ yrs. vacant; farmhouse needs extensive work; barn in poor condition; garage in fair condition; contact Interior for more info.

Washington

Chinook Pass Work Center
07672 00
17137 Washington 410; located at MP 100
Naches WA 98937
Landholding Agency: Agriculture
Property Number: 15201620045
Status: Unutilized
Directions: 2317 (2055.005511); 1835 (1162.005511); 2675 (61230010700); 1020 (1099.005511)
Comments: off-site removal only; no future agency need; good to poor conditions; sq. ft. varies; contact Agriculture for more info. details on a specific property.

White Pass Work Center
07672 00
31381 Hwy 12; located at MP 17 from 410/12 junction
Naches WA 98937
Landholding Agency: Agriculture
Property Number: 15201620046
Status: Unutilized
Directions: 2251 (1126.005511); 2250 (1125.005511); 2311 (1117.005511); 2350 (1127.005511); 2450 (1129.005511)1402 (1946010416); 1351 (1113.005511); 2313 (1119.005511); 1052 (1104.005511); 2312 (1118.005511)
Comments: off-site removal only; no future agency need; poor conditions; sq. ft. varies; contact Agriculture for more details on a specific property.

Wisconsin

FM Repeater Station Install.#3
Sec. 26, T. 9N, R 6W
Lynxville WI 54626
Landholding Agency: GSA
Property Number: 54201540003
Status: Excess
GSA Number: 1–D–WI–622
Directions: Land Holding Agency: COE; Disposal Agency: GSA
Comments: CORRECTION from June 24 FR: Property is suitable and unavailable; reason: Advertised for sale; 50+ yrs. old; 80 sq. ft.; storage; average condition; contact GSA for more information.

Unsuitable Properties

Building

California

Bus Shelter
311 Main St (Bldg. PM1–837)
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201620028
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Administrative Office
311 Main St (Bldg. 41SNI)
Point Mugu CA 93043
Landholding Agency: Navy
Property Number: 77201620029
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Florida

Bldg. 5008 AAFES Shoppette
6901 Hwy 98
Tyndall AFB FL
Landholding Agency: Air Force
Property Number: 18201620045
Status: Unutilized
Comments: property located within military airfield.
Reasons: Within airport runway clear zone

Bldg. 5007 AAFES Storage
6903 Hwy 98
Tyndall AFB FL 32403
Landholding Agency: Air Force
Property Number: 18201620046
Status: Unutilized
Comments: property located in military airfield.
Reasons: Within airport runway clear zone

New Jersey

Building 603
3 Miles from the entrance of the park inside of lot D
Highlands NJ 07732
Landholding Agency: Interior
Property Number: 61201620012
Status: Excess
Comments: property located within floodway which has not been correct or contained. Documented deficiencies: structural damage due to Superstorm Sandy; unsound foundation; clear threat to physical safety.
Reasons: Extensive deterioration; Floodway

New Mexico

Bldg. 202
207 Phoenix Ave.
Cannon AFB NM
Landholding Agency: Air Force
Property Number: 18201620047
Status: Unutilized
Comments: public access denied and no alternative to gain access without compromising national security.
Reasons: Secured Area

Bldg. 772
109 E Albright Ave.
Cannon AFB NM
Landholding Agency: Air Force
Property Number: 18201620048
Status: Unutilized
Comments: public access denied and no alternative without compromising national security.
Reasons: Secured Area

Bldg. 211
108 N. Aderholt Loop
Cannon AFB NM
Landholding Agency: Air Force
Property Number: 18201620049
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Pennsylvania

National Energy Technology
626 Cochrans Mills Road
PO Box 10940
Pittsburgh PA 15236
Landholding Agency: GSA
Property Number: 54201620027
Status: Excess
GSA Number: 4–B–PA–0835AA
Directions: Land Holding Agency: Energy; Disposal Agency: GSA
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Rhode Island

3 Buildings
Naval Station Newport
Newport RI 02871
Landholding Agency: Navy
Property Number: 77201620030
Status: Excess
Directions: Building P30, P60 & 49
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Virginia

Tract 02–175 Machinery Storage Shed
226 Claven Lane
Middletown VA 22645
Landholding Agency: Interior
Property Number: 61201620015
Status: Excess
Comments: documented deficiencies: documentation provided represents a clear threat to personal physical safety; poor condition & structurally unsound.
Reasons: Extensive deterioration

[FR Doc. 2016–15267 Filed 6–27–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2016–N105; FXES11130700000–167–FF07C00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a permit to conduct activities intended to enhance the survival of endangered species. Federal law prohibits certain activities with endangered species unless a permit is obtained.

DATES: To ensure consideration, please send your written comments by July 28, 2016.

ADDRESSES: You may submit comments by either of the following methods. You may also use one of the following methods to request more information or hard copies or a CD–ROM of the documents.

- *Email: permitsR7ES@fws.gov.* Please refer to Permit Number TE–99138B in the subject line of the message.
- *U.S. Mail:* U.S. Fish and Wildlife Service, MS 361, 1011 East Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Drew Crane, Endangered Species Coordinator, Ecological Services, (907) 781–3323 (phone); *permitsR7ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless the activities have been authorized by a Federal permit. The Act and its implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies and the public to comment on the following application. Documents and other information the applicant has submitted with the application are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number TE–99138B

Applicant: U.S. Fish and Wildlife Service, Anchorage, AK.

The applicant requests a permit to collect genetic material from Aleutian shield ferns (*Polystichum aleuticum*) in Alaska for the purpose of enhancing the species' survival.

National Environmental Policy Act

The proposed activities in the requested permit qualify as categorical exclusions under the National

Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the CFR (43 CFR 46.205, 46.210, and 46.215).

Public Availability of Comments

All comments and materials we receive in response to this notice will be available for public inspection, by appointment, during normal business hours at the address listed above in **ADDRESSES**.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: June 20, 2016.

Mary Colligan,

Assistant Regional Director, Alaska Region.

[FR Doc. 2016–15288 Filed 6–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2016–0004]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XE423]

Notice of Availability and Request for Public Comment on the Joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Habitat Conservation Planning Handbook

AGENCY: Fish and Wildlife Service, Interior; National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), issue Endangered Species Act incidental take permits and help applicants develop conservation plans as a prerequisite to obtaining those permits. We announce the availability of and request public comment on a draft revision of our joint Habitat Conservation Plan (HCP) Handbook, which describes requirements, procedures, and guidance for permit issuance and conservation-plan development. The HCP Handbook initially was released in 1996, and revised by addendum in July 2000.

DATES: To ensure consideration, written comments on the draft HCP Handbook must be received or postmarked on or before August 29, 2016. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered.

ADDRESSES:

Availability of Documents

Internet: You may obtain copies of all of the documents at: *http://www.regulations.gov/.*

Comment submission: You may submit written comments on the draft joint HCP Handbook by one of the following methods:

- *Electronically:* Go to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–HQ–ES–2016–0004, or NOAA–NMFS–2016–0004, which is the docket number for this notice. On the left side of the screen, under the Document Type heading, click on the Notices link to locate this document, complete the required fields, and enter or attach your comment.
- *By hard copy:* Submit comments by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–HQ–ES–2016–0004, or NOAA–NMFS–2016–0004; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

Instructions: We request that you send comments by only the methods described above. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by the Services.

All comments received will be a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. You may request at the top of your document that we withhold your personal information from public review; however, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Trish Adams, USFWS (phone: 703–358–2120; email: *trish_adams@fws.gov*), or Heather Coll, NMFS (phone: 301–427–8455; email: *heather.coll@noaa.gov*). Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS), issue Endangered Species Act section 10(a)(1)(B) incidental take permits and help applicants develop conservation plans as a prerequisite to obtaining those permits. With this notice, we announce the availability of and request public comment on a draft revision of our joint Habitat Conservation Planning (HCP) Handbook, which describes requirements, procedures, and guidance for section 10(a)(1)(B) permit issuance and conservation-plan development. The joint HCP Handbook initially was announced via a **Federal Register** notice on December 2, 1996 (61 FR 63854), and was revised by addendum, effective July 3, 2000 (65 FR 35242; June 1, 2000). The new, revised draft of the joint HCP Handbook we are announcing via this notice is intended to be more streamlined and user-friendly. It follows the HCP process from start to finish and incorporates feedback we have received about the program.

Background

The purpose of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), is to protect and recover threatened and endangered species and the ecosystems upon which they depend. Section 9 of the ESA prohibits take of any fish or wildlife species listed as endangered, and take of many species listed as threatened is prohibited by regulation. “Take” is defined in section 3 as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Before 1982, the ESA had a mechanism for exempting Federal actions (section 7) from the prohibition on take, but it did not have one for non-Federal activities, except for permits to authorize take from scientific research or certain other conservation actions. Thus, non-Federal parties engaging in activities that resulted in take of listed species risked violating ESA section 9 take prohibitions. Congress recognized the need for a process to reduce conflicts between protection of listed species and economic development, so it amended the ESA in 1982 to add an exemption for incidental take of listed species that would result from non-Federal activities (section 10(a)(1)(B)). "Incidental take" is that which is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. To obtain a permit for under section 10(a)(1)(B), applicants must develop a conservation plan that meets specific requirements identified in section 10 and its regulations (50 CFR 17.22 and 17.32; 50 CFR 222.25, 222.27, and 222.31). Among other requirements, the plan must specify (1) the impacts that are likely to result from the taking and (2) the measures that the permit applicant will undertake to minimize and mitigate such impacts. Conservation plans under section 10(a)(1)(B) have come to be known as "habitat conservation plans" (HCPs). Section 10(a)(2)(B) provides statutory criteria that must be satisfied before an incidental take permit (ITP) can be issued.

Handbook Purpose

The purpose of the joint HCP Handbook is to instruct USFWS and NMFS (Services) staff on how to assist applicants to develop HCPs in an efficient and effective manner while ensuring adequate conservation for listed species. The Handbook guides Services staff, phase by phase, through development, implementation, and environmental compliance, using streamlined approaches whenever possible. It draws upon past experience to help staff understand regulations and policy and navigate the various processes for completing an HCP and issuing a permit. Although the joint HCP Handbook is designed specifically for Services' staff, it also can be helpful to other HCP practitioners, such as applicants, consultants, and partners.

Need for Handbook Revision

The HCP program has evolved in response to changes in society and our natural resources. Because of changes to the program, the USFWS decided to contract Management Systems International to prepare an independent review of our HCP program in 2008, as well as a collection of input and recommendations for the program from various sources. These reviews and recommendations have provided the important feedback that our program is highly effective in achieving its purpose of avoiding, minimizing, and mitigating the effects of development on endangered (or threatened) species and their habitats, and, in some cases, exceeds minimum requirements and makes a positive contribution to improving species habitat and contributing to species recovery. However, feedback also has indicated that the processes used to develop and approve ITPs can be inefficient. Commonly expressed concerns related to inefficiency are: HCPs take too long to develop and cost too much; negotiations can be complex; implementation is too expensive; applicants perceive lack of certainty; and the benefits of the HCP program are not readily apparent to internal or external stakeholders. The proposed revisions to the Handbook address these concerns in various ways, ranging from clarification of existing guidance to policy-level changes.

Proposed Revisions Made to Handbook

The revised HCP Handbook reflects current USFWS and NMFS HCP practices, guidance, and policies; incorporates lessons from the 30-year history of implementing the HCP program; and provides guidance to assist applicants and the Services' staff to avoid common pitfalls that can delay HCP negotiations and development or processing of ITPs.

The goal is to provide a joint HCP Handbook that helps to streamline and improve efficiency of the HCP program. To accomplish this, we have reorganized the joint HCP Handbook, with the goal of walking Services staff and stakeholders through each stage of the HCP process, from the pre-application stage through ITP issuance and HCP implementation, including monitoring and compliance.

Some of the most significant changes to the joint HCP Handbook include:

(1) We introduced the concept that applicants should "start slow to go fast," which emphasizes the benefits to applicants of pre-planning before jumping directly into HCP development, especially for landscape-scale HCPs.

(2) To streamline the ITP issuance process, we focused on the vital review and administrative steps without compromising legal integrity.

(3) We clarified the concept "maximum extent practicable."

(4) We ensured consistency with revised or updated policies such as draft USFWS Mitigation Policy.

(5) We clarified the use of implementing agreements.

(6) We updated and clarified permit duration.

(7) We provided guidance on how to comply with section 106 of the National Historic Preservation Act.

(8) We provided guidance on addressing climate change.

(9) We updated and clarified what should be addressed through adaptive management versus foreseen and unforeseen circumstances.

(10) We provided guidance on when to initiate the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) process or intra-Service section 7 consultations, and when to seek assistance from the Solicitor or General Counsel.

(11) We updated and clarified information concerning take analysis, responding to public comments, public notices, permit decision documents, compliance monitoring, and ITP suspension and revocation.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 22, 2016.

Angela Somma,

Chief, Endangered Species Conservation Division, National Marine Fisheries Service.

Dated: June 20, 2016.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2016–15230 Filed 6–27–16; 8:45 am]

BILLING CODE 4333–15–P; 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–R–2015–N206]; [FF06R06000–FXRS12610600000–167]

Rocky Mountain Arsenal National Wildlife Refuge, CO; Availability of Record of Decision for the Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a record of decision (ROD) for the final environmental impact statement (EIS) for the Rocky Mountain Arsenal National Wildlife Refuge (refuge, NWR) in Adams County, Colorado.

ADDRESSES: You may view or obtain copies of the ROD, the final EIS, or other project information by any of the following methods:

Agency Web site: Download a copy of the documents at *http://www.fws.gov/mountain-prairie/refuges/co_rkm.php.*

Email: rockymountainarsenal@fws.gov. Include "Request copy of the Rocky Mountain Arsenal NWR ROD" in the subject line of the message.

U.S. Mail: Rocky Mountain Arsenal NWR, 6550 Gateway Road, Commerce City, CO 80022.

Local Libraries: The final documents are available for review at the libraries listed under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: David Lucas, Project Leader, at 303–289–0350 (phone), or Bernardo Garza, Planning Team Leader, 303–236–4377 (phone) or *bernardo_garza@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we announce the availability of the ROD for the final EIS for the refuge. We started this process through a notice in the **Federal Register** (78 FR 48183; August 7, 2013). Following a lengthy scoping and alternatives development period, we published a second notice in the **Federal Register** (80 FR 26084; May 6, 2015), announcing the availability of the draft comprehensive conservation plan (CCP) and draft EIS and our intention to hold public meetings, and requesting comments. We then published a third notice in the **Federal Register** (80 FR 52056, August 27, 2015), announcing the publication of the final EIS for the refuge.

The primary planning area for this decision includes the Rocky Mountain Arsenal NWR, which is located within the Denver Metropolitan Area, in Adams County, Colorado.

The Rocky Mountain Arsenal NWR encompasses nearly 16,000 acres and is home to more than 468 plant species and 350 wildlife species, including the endangered black-footed ferret, bald eagle, prairie dog, bison, deer, a wide variety of resident and migratory birds and raptors, amphibians, reptiles, fishes, and insects. The refuge's habitats include short and mixed grass prairie, interspersed with native shrubs, riparian corridors, lacustrine habitats on the refuge reservoirs, and woodlands planted by settlers around historic homesteads. The refuge is surrounded by the cities of Commerce City and Denver, and the Denver International Airport, along the Colorado Front Range.

Visitors take part in a variety of wildlife-dependent recreational activities on the refuge. The refuge is open for catch-and-release fishing, wildlife observation, photography, interpretation, and environmental education. As part of the CCP and EIS process, we have considered opening the refuge to limited special hunts.

Over 12,000 years of prehistory and history have been recorded in the site of the refuge, and the refuge contains significant cultural resources.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final EIS for the Rocky Mountain Arsenal NWR. We completed a thorough analysis of the environmental, social, and economic considerations associated with our actions. The ROD documents our selection of alternative C, the preferred alternative.

Alternative C—Urban Refuge, as we described in the final EIS and ROD, is the foundation for the CCP which we will finalize by winter 2016.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. We will finalize the CCP for the refuge by winter 2016 and will update it at least every 15 years in accordance with the Administration Act.

CCP Alternatives and Selected Alternative

Our final EIS (80 FR 52056, August 27, 2015) addressed several issues. To address these, we developed and evaluated the following alternatives: Alternative A—No Action, Alternative B—Traditional Refuge, Alternative C—Urban Refuge, and Alternative D—Gateway Refuge.

Based on our environmental consequences analysis, we concluded that alternative B constituted the environmentally preferable alternative as it would have caused the least damage to the biological and physical environment.

However, after consideration of the 90 comments that we received on the draft CCP and draft EIS and a minor comment we received following the release of the final EIS, we selected alternative C—Urban Refuge as the preferred alternative. It is the alternative that best meets the purposes of the refuge; the mission of the National Wildlife Refuge System; the vision and management goals set for the refuge; adheres to Service policies and guidelines, and seeks to implement the Service's Urban Wildlife Conservation Program. It considers the interests and perspectives of many agencies, organizations, municipalities, and the public.

Under alternative C and in cooperation with our partners, we will continue to restore and maintain refuge habitats and manage wildlife populations in accordance with approved plans. We will increase the visibility of the refuge in the Denver Metropolitan Area and welcome many more nontraditional visitors to the refuge. Through an expanded visitor services program, an abundance of instructional programming, and widespread outreach, we will endeavor to connect more people with nature. We will work with nontraditional users' trusted avenues of communication to increase outreach success. We will expand our conservation education in surrounding communities and schools, develop youth-specific outreach, and employ social marketing to broaden our agency's reach. We will make the refuge more accessible to outlying communities by opening additional access points and enhancing the refuge transportation systems.

Public Availability of Documents

In addition to any one method in **ADDRESSES**, you can view or obtain documents at the following public libraries:

Library	Address	Phone No.
Aurora Central Public Library	14949 E Alameda Parkway, Aurora, CO 80012	(303) 739–6600
Commerce City Public Library	7185 Monaco Street, Commerce City, CO 80022	(303) 287–0063
Denver Central Library	10 W Fourteenth Avenue, Denver, CO 80204	(720) 865–1111
Montbello Public Library	12955 Albrook Drive, Denver, CO 80239	(720) 865–0200
Rangeview Library District	327 E Bridge Street, Brighton, CO 80601	(303) 405–3230

Next Steps

We will work with our cooperating agencies to finalize the CCP by winter 2016 and will begin its implementation immediately thereafter.

Dated: March 29, 2016.

Matt Hogan,

Deputy Regional Director, Mountain-Prairie Region, U.S. Fish and Wildlife Service.

[FR Doc. 2016–15292 Filed 6–27–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21274; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: History Colorado, formerly Colorado Historical Society, Denver, CO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: History Colorado, formerly Colorado Historical Society, has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to History Colorado. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to History Colorado at the address in this notice by July 28, 2016.

ADDRESSES: Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of History Colorado, Denver, CO. Seven sets of human remains were received from the Montezuma County Coroner. They were recovered from the vicinity of Cortez or Mancos, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by History Colorado professional staff in consultation with representatives of the Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Southern Ute Indian Tribe of the Southern Ute Indian Reservation, Colorado; Ute Mountain Ute Tribe (previously listed as the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah); and Ysleta del Sur Pueblo of Texas (previously listed as the Ysleta Del Sur Pueblo of Texas). The Apache Tribe of Oklahoma, Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Fort Sill Apache Tribe of Oklahoma; Pueblo of Jemez, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; and the Zuni Tribe of the Zuni Reservation, New Mexico were invited to consult, but did not participate. Hereafter, all tribes listed above are referred to as "The Consulted and Invited Tribes."

History and Description of the Remains

At an unknown date, human remains representing, at minimum, two individuals were removed from the vicinity of Cortez, CO, by an 8 year old boy. As an adult, in August 2015, he relinquished them to the Montezuma County Coroner, who ruled out a forensic interest. The human remains were transferred to the Office of the State Archaeologist (OSAC) in October 2015, where they were assigned Office of Archaeology and Historic Preservation (OAHP) Case Number 311. Osteological analysis conducted at Metropolitan State University indicates that the human remains represent a child and subadult and are likely of Native American ancestry. No known individuals were identified. No associated funerary objects are present.

At an unknown date, human remains representing, at minimum, five individuals were removed from an unknown place, possibly in the vicinity of Mancos, CO. The human remains were discovered in the estate of a deceased man. In November 2015, the son of the man turned them over to the Montezuma County Coroner, who ruled out forensic interest. In February 2016, the human remains were transferred to the Office of the State Archaeologist, where they were assigned Office of Archaeology and Historic Preservation (OAHP) Case Number 313. Osteological analysis at Metropolitan State University indicates that the human remains represent two adult females, two children and one male and are likely of Native American ancestry. No known individuals were identified. No associated funerary objects are present.

History Colorado, in partnership with the Colorado Commission of Indian Affairs, Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah, conducted tribal consultations among the tribes with ancestral ties to the State of Colorado to develop the process for disposition of culturally unidentifiable Native American human remains and associated funerary objects originating from inadvertent discoveries on Colorado State and private lands. As a result of the consultation, a process was developed, the *Process for Consultation, Transfer, and Reburial of Culturally Unidentifiable Native American Human Remains and Associated Funerary Objects Originating From Inadvertent Discoveries on Colorado State and Private Lands* (2008, unpublished, on file with the Colorado Office of Archaeology and Historic Preservation). The tribes consulted are those who have expressed their wishes to be notified of discoveries in the Southwest Region as established by the *Process,* where these individuals appear to have originated.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. On November 3–4, 2006, the *Process* was presented to the Review Committee for consideration. A January 8, 2007, letter on behalf of the Review Committee from the Designated Federal Officer transmitted the provisional authorization to proceed with the *Process* upon receipt of formal responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma, subject to forthcoming conditions imposed by the Secretary of the Interior. On May 15–16, 2008, the responses from the Jicarilla Apache Nation, New Mexico, and the Kiowa Indian Tribe of Oklahoma were submitted to the Review Committee. On September 23, 2008, the Assistant Secretary for Fish and Wildlife and Parks, as the designee for the Secretary of the Interior, transmitted the authorization for the disposition of culturally unidentifiable human remains according to the *Process* and NAGPRA, pending publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

43 CFR 10.11 was promulgated on March 15, 2010, to provide a process for the disposition of culturally unidentifiable Native American human remains recovered from tribal or aboriginal lands as established by the final judgment of the Indian Claims Commission or U.S. Court of Claims, a treaty, Act of Congress, or Executive Order, or other authoritative governmental sources. As there is no evidence indicating that the human remains reported in this notice originated from tribal or aboriginal lands, they are eligible for disposition under the *Process.*

Determinations Made by History Colorado

Officials of History Colorado have determined that:

- Based on osteological analysis, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of seven individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 43 CFR 10.11(c)(2)(ii) and the *Process,* the disposition of the human remains may be to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Sheila Goff, NAGPRA Liaison, History Colorado, 1200 Broadway, Denver, CO 80203, telephone (303) 866–4531, email *sheila.goff@state.co.us,* by July 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado, and the Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah may proceed.

History Colorado is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: June 8, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–15244 Filed 6–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21299]; [PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Georgia State University, Department of Anthropology, Atlanta, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Georgia State University has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Georgia State University. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Georgia State University at the address in this notice by July 28, 2016.

ADDRESSES: Dr. Frank Williams, Department of Anthropology, Georgia State University, P.O. Box 3998, Atlanta, GA 30302–3998, telephone (404) 413–5154, email *frankwilliams@gsu.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Georgia State University. The human remains were removed from Greene County, TN, Altamaha River Basin, GA, and eastern Georgia.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Georgia State University professional staff in consultation with representatives of the Cherokee Nation; the Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma. The following tribes were contacted, but either declined consultation or did not respond: The Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas); the Alabama-Quassarte Tribal Town; The Chickasaw Nation; the Coushatta Tribe of Louisiana; Kialegee Tribal Town; the Poarch Band of Creek Indians (previously listed as the Poarch Band of Creek Indians of Alabama); and the Thlopthlocco Tribal Town. All tribes in this section are hereafter referred to as The Consulted and Invited Tribes.

History and Description of the Remains

Between 1970 and 1975, human remains representing, at minimum, nine individuals were removed from an unknown site, probably in eastern Georgia. The human remains are thought to have been excavated by

Antonio J. Waring. Evidence of head binding circumstantially agrees with the known Native American context of this excavation. All of Waring's excavations took place in the Southeastern United States, with the majority in eastern Georgia. Geographic evidence suggests these human remains are either Creek or Cherokee. No known individuals were identified. No associated funerary objects are present.

Between 1970 and 1980, human remains representing, at minimum, eight individuals were removed from site 40GN9 in Greene County, TN. Site 40GN9, a Middle Qualla site, was excavated by an unknown person, and transferred on an unknown date to Georgia State University. Geographic evidence suggests these human remains to be Cherokee, and likely from the town of Canasoga or Canasahaqui. These human remains are determined to be Native American based on the cultural and geographic documentation. No known individuals were identified. No associated funerary objects are present.

In March of 1971, human remains representing, at minimum, six individuals were removed from the Altamaha River basin, McIntosh County, GA. These human remains were removed by the late Dr. Wharton of the GSU Biology department, and received into custody at Georgia State University. The human remains were identified by Dr. Wharton as Native American. Geographical and archeological evidence suggests that these human remains are Native American, and likely Creek or Yamassee. No known individuals were identified. No associated funerary objects were present.

Determinations Made by Georgia State University

Officials of Georgia State University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 23 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Cherokee Nation; the Eastern Band of Cherokee Indians; The Muscogee (Creek) Nation; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Dr. Frank Williams, Department of Anthropology, Georgia State University, P.O. Box 3998, Atlanta, GA 30302–3998, telephone (404) 413–5154, email *frankwilliams@gsu.edu,* by July 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Cherokee Nation, Eastern Band of Cherokee Indians, Muscogee (Creek) Nation, and the United Keetoowah Band of Cherokee Indians in Oklahoma may proceed.

Georgia State University is responsible for notifying The Consulted and Invited Tribes that this notice has been published.

Dated: June 13, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–15243 Filed 6–27–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21158; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site, Ganado, AZ; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The U.S. Department of the Interior, National Park Service, Hubbell Trading Post National Historic Site has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Hubbell Trading Post National Historic Site. If no additional requestors come forward, transfer of control of the human remains to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Hubbell Trading Post National Historic Site at the address in this notice by July 28, 2016.

ADDRESSES: Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box, 150 Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Hubbell Trading Post National Historic Site, Ganado, AZ. The human remains were removed from Hubbell Trading Post National Historic Site, Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the Superintendent, Hubbell Trading Post National Historic Site.

This notice corrects the minimum number of individuals reported in two previously published notices: Notice of Inventory Completion (79 FR 43776–43778, July 28, 2014); and corrected Notice of Inventory Completion (80 FR 59181–59182, October 1, 2015). This notice replaces both the original Notice of Inventory Completion of July 28, 2014 and the corrected Notice of Inventory Completion of October 1, 2015. After the October 2015 notice correction was published, officials of Hubbell Trading Post National Historic Site received additional information indicating that the likely removal date of one individual was incorrect, and is, in fact, unknown. Furthermore, officials cannot reasonably determine that the individual had likely been removed from within the boundaries of Hubbell Trading Post National Historic Site. Therefore, the determination that the land from which the remains were removed was tribal land at the time of removal cannot be supported and this one individual has been removed from the notice. Transfer of control of the items in this correction notice has not occurred.

Consultation

A detailed assessment of the human remains was made during a region-wide, multi-park process by Hubbell Trading Post National Historic Site professional staff in consultation with representatives of the Ak Chin Indian

Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)); Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; San Juan Southern Paiute Tribe of Arizona; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Tohono O'odham Nation of Arizona; Ute Indian Tribe of the Uintah & Ouray Reservation, Utah; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; and Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California (hereafter referred to as "The Consulted Tribes").

The following tribes were invited to consult but did not participate in the face-to-face consultation meeting: Apache Tribe of Oklahoma; Arapaho Tribe of the Wind River Reservation, Wyoming; Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California); Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California); Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California); Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon); Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma); Comanche Nation, Oklahoma; Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo); Kiowa Indian Tribe of Oklahoma; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California); Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Summit Lake Paiute Tribe of Nevada; Tonto Apache Tribe of Arizona; Walker River Paiute Tribe of the Walker River Reservation, Nevada; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona); Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada; and Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as "The Invited Tribes").

History and Description of the Remains

In 1989, human remains representing, at minimum, two individuals were removed from site AZ K:6:8 in Apache County, AZ during excavations prior to replacing the wareroom floor. No known individuals were identified. No associated funerary objects are present.

Determinations Made by Hubbell Trading Post National Historic Site

Officials of Hubbell Trading Post National Historic Site have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on osteological analysis and site location.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Pursuant to 25 U.S.C. 3001(15), the land from which the Native American human remains were removed is the tribal land of the Navajo Nation, Arizona, New Mexico & Utah.
- Pursuant to 43 CFR 10.11(c)(1)(i), the disposition of the human remains will be to the Navajo Nation, Arizona, New Mexico & Utah.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Lloyd Masayumptewa, Superintendent, Hubbell Trading Post National Historic Site, P.O. Box 150, Ganado, AZ 86505–0150, telephone (928) 755–3475, email *lloyd_masayumptewa@nps.gov*, by July 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Navajo Nation, Arizona, New Mexico & Utah may proceed.

Hubbell Trading Post National Historic Site is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 26, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–15270 Filed 6–27–16; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–21088; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: State Center Community College District, Fresno, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The State Center Community College District has completed an inventory of human remains and associated funerary objects, in

consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribes or Native Hawaiian organizations. Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the State Center Community College District. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the State Center Community College District at the address in this notice by July 28, 2016.

ADDRESSES: Cynthia E. Azari, Ed.D., President, Fresno City College, State Center Community College District, 1101 East University Avenue, Fresno, CA 93741, telephone (559) 442–4600, email *cynthia.azari@fresnocitycollege.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the State Center Community College District, Fresno, CA. The human remains and associated funerary objects were removed from Fresno and Merced Counties, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the State Center Community College District professional staff in consultation with representatives of the Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); California Valley Miwok Tribe, California; Northfork Rancheria of Mono Indians of California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Picayune Rancheria of Chukchansi Indians of California; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada; and the Dunlap Band of Mono Indians and Traditional Choinumni Tribe (a non-federally recognized Indian group), hereafter referred to as "The Consulted Tribes."

Documentation that accompanied an invitation to consult was also provided to the Buena Vista Rancheria of Me-Wuk Indians of California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Ione Band of Miwok Indians of California; Jackson Band of Miwuk Indians (previously listed as the Jackson Rancheria of Me-Wuk Indians of California); Middletown Rancheria of Pomo Indians of California; Reno-Sparks Indian Colony, Nevada; Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation); Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band); Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; all of whom did not engage with the SCCCD in consultation. The invitation and documentation was also provided to the Wukchumni Tribe (a non-federally recognized Indian group), hereafter referred to as "The Invited Tribes."

History and Description of the Remains

Between the 1940s and 1970s, human remains representing, at minimum, one individual were removed from Squaw Valley, Fresno County, CA. No known individuals were identified. No associated funerary objects are present.

Between the 1940s and 1970s, human remains representing, at minimum, one individual were removed from El Nido, on the San Joaquin River, Merced County, CA. No known individuals were identified. The one associated funerary object is 1 lot of dirt.

Between the 1940s and 1970s, human remains representing, at minimum, 16 individuals were removed from Fresno or Merced County, CA. No known individuals were identified. The seven associated funerary objects are 1 small rock, 1 lot of unidentifiable non-bone materials, 3 lots of dirt, 1 seed fragment, and 1 unidentifiable non-bone object.

According to Mr. Ron Gerstenberg, former natural resources teacher at Reedley College, the human remains were collected by Robert Merz, who taught anthropology at Reedley College. Mr. Merz was active from the 1940s until he retired in the 1970s and has since passed. Before he retired, Mr. Merz gave the remains to Mr. Gerstenberg for safekeeping at Reedley College.

In September 2011, Reedley College staff sent the collection to the State Center Community College District Police Department (SCCCDPD). Ms. Miller and Dr. Jill Minar, archeology instructor at Fresno City College, examined the human remains and cultural items at the SCCCDPD and after preliminary examination, it was determined the human remains were likely Native American.

Ms. Miller contacted the Fresno County Coroner, David Hadden, and arranged for Dr. Roger La Jeunesse, Biological Anthropologist/Professor at California State University Fresno, to examine the human remains and provide a report as to the contents of the boxes. After examination the human remains were returned to Fresno City College Archaeological Curation Facility where they are currently housed.

Determinations Made by the State Center Community College District

Officials of the State Center Community College District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice are Native American based on a biological analysis of the complete crania, dental wear on the teeth, and the presence of soil still adhering to some of the remains, as well as the contents of notes found in association with the remains and Mr. Merz area of interest.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 18 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the eight objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission or the Court of Federal Claims, the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada.
- Treaties, Acts of Congress, or Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Middletown Rancheria of Pomo Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects may be to Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Middletown Rancheria of Pomo Indians of California; Northfork Rancheria of Mono Indians of California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada. To date, the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, have requested disposition jointly.

Additional Requestors and Disposition

Representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Cynthia E. Azari, Ed.D., Interim President, Fresno City College, State Center Community College District, 1101 East University Avenue, Fresno, CA 93741, telephone (559) 442–4600, email *cynthia.azari@fresnocitycollege.edu*, by July 28, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California); Buena Vista Rancheria of Me-Wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Cold Springs Rancheria of Mono Indians of California; Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Middletown Rancheria of Pomo Indians of California; Northfork Rancheria of Mono Indians of California; Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria; Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada; Reno-Sparks Indian Colony, Nevada; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; Walker River Paiute Tribe of the Walker River Reservation, Nevada; and the Yerington Paiute Tribe of the Yerington Colony and Campbell Ranch, Nevada may proceed. To date, the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, have requested disposition jointly.

The State Center Community College District is responsible for notifying The Consulted Tribes and The Invited Tribes that this notice has been published.

Dated: May 13, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–15242 Filed 6–27–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Composite Intermediate Bulk Containers, DN 3158;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Schütz Container Systems Inc. on June 22, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain composite intermediate bulk containers. The complaint names as a respondent Zhenjiang Runzhou Jinshan Packaging Factory of China. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(1) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(2) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(3) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(4) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(5) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3158") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[4] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 22, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15182 Filed 6–27–16; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of the Judicial Conference Advisory Committee on the Federal Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on the Federal Rules of Bankruptcy Procedure.

ACTION: Notice of proposed amendments to Bankruptcy Rule 3015, Proposed New Bankruptcy Rule 3015.1, and of open hearings.

SUMMARY: The Advisory Committee on the Federal Rules of Bankruptcy Procedure has proposed amendments to Bankruptcy Rule 3015, and adoption of new Bankruptcy Rule 3015.1. The text of the proposed rules and the accompanying Committee Notes are posted on the Judiciary's Web site at:*http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment.*

All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for public comment on July 1, 2016, but no later than October 3, 2016. Written comments must be submitted electronically, following the instructions provided on the Web site. All comments submitted will be available for public inspection.

A public hearing is scheduled to be held on the proposed amendments in Pasadena, California on September 27, 2016. Those wishing to testify must contact the Secretary at the address below in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Womeldorf, Secretary,

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE., Suite 7–240, Washington, DC 20544, Telephone (202) 502–1820.

Dated: June 23, 2016.

Rebecca A. Womeldorf,

Secretary, Committee on Rules of Practice and Procedure, Judicial Conference of the United States.

[FR Doc. 2016–15218 Filed 6–27–16; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On June 21, 2106, the Department of Justice lodged a proposed consent decree with the United States District Court for the Northern District of California in the lawsuit entitled *United States* v. *Trader Joe's Company,* Civil Action No. 3:16-cv-03444–EDL.

The United States filed this lawsuit under the Clean Air Act. The United States' complaint seeks injunctive relief and civil penalties for violations of the regulations governing the service and repair of commercial refrigeration appliances that use ozone-depleting refrigerant and for violations of the requirements to provide compliance information when requested by the United States Environmental Protection Agency. The consent decree requires Trader Joe's Company to perform injunctive relief and pay a $500,000 civil penalty.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Trader Joe's Company,* D.J. Ref. No. 90–5–2–1–10321. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $14.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Jeffrey K. Sands,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15203 Filed 6–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On June 23, 2016, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Pennsylvania, Middle District, in a lawsuit entitled *United States* v. *D.G. Yuengling and Son, Inc.,* Civil Action No. 3:16–cv–01252.

The proposed Consent Decree will resolve Clean Water Act claims alleged in this action by the United States against D.G. Yuengling and Son, Inc. ("Defendant") for violations of the terms and conditions of industrial user pretreatment permits issued pursuant to an approved pretreatment program under the Clean Water Act for two brewery facilities, referred to as the Old Brewery and New Brewery, owned and operated by Defendant. Under the proposed Consent Decree, Defendants will perform injunctive relief including: (1) Development and implementation of a an environmental management system and third-party environmental compliance auditing; (2) constructing a comprehensive pretreatment system for the Old Brewery facility; (3) optimizing and improving operation and maintenance of the pretreatment system at the New Brewery facility; (4) development and implementation of a communication and notification plan; (5) hiring certified wastewater treatment operators; (6) implementing an electronic notification violation system; and (7) implementing a violation response process. In addition, Defendant will pay a $2.8 million civil penalty.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States* v. *D.G. Yuengling and Son, Inc.,* D.J. Ref. No. 90–5–1–1–10971. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $20.50 (25 cents per page reproduction cost) for the proposed Consent Decree payable to the United States Treasury. For a paper copy without the appendices, the cost is $13.75.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2016–15311 Filed 6–27–16; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

[TA–W–91,352; TA–W–91,352A]

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–91,352, NORANDA ALUMINUM, INC., A SUBSIDIARY OF NORANDA ALUMINUM HOLDING CORPORATION INCLUDING ON-SITE LEASED WORKERS FROM MANPOWER, NEW MADRID, MISSOURI

TA–W–91,352A, EXPRESS PERSONNEL, RANDSTAD, AND WHELAN SECURITY

COMPANY WORKING ON-SITE AT NORANDA ALUMINUM, INC., A SUBSIDIARY OF NORANDA ALUMINUM HOLDING CORPORATION, NEW MADRID, MISSOURI

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 2016 applicable to workers of Noranda Aluminum, Inc., a subsidiary of Noranda Aluminum Holding Corporation, including on-site leased workers from Manpower, Express Personnel, and Randstad, New Madrid, Missouri. The Department's notice of determination was published in the **Federal Register** on April 26, 2016 (81 FR 24648).

At the request of the State of Missouri, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of aluminum smelter, aluminum sows, ingots, billets, and rods.

The company reports that workers leased from Whelan Security Company were employed on-site at the New Madrid, Missouri location of Noranda Aluminum, Inc., a subsidiary of Noranda Aluminum Holding Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Whelan Security Company, working on-site at New Madrid, Missouri location of Noranda Aluminum, Inc., a subsidiary of Noranda Aluminum Holding Corporation.

The amended notice applicable to TA–W–91,352 and TA–W–91,352AS is hereby issued as follows:

> All workers of Noranda Aluminum, Inc., a subsidiary of Noranda Aluminum Holding Corporation, including on-site leased workers from Manpower, New Madrid, Missouri, who became totally or partially separated from employment on or after February 5, 2016 through March 25, 2018, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended; AND,
>
> All workers of Express Personnel, Randstad, and Whelan Security Company, working on-site at Noranda Aluminum, Inc., a subsidiary of Noranda Aluminum Holding Corporation, New Madrid, Missouri (TA–W–91,352A), who became totally or partially separated from employment on or after January 14, 2015 through March 25, 2018, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 23rd day of May 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–15250 Filed 6–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of *May 23, 2016 through June 3, 2016.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(e) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) not withstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,073	Process Mfg. Co., Inc., T.R.S. and Stand-By Personnel	Tulsa, OK	January 1, 2014.
91,019	Alton Steel, Inc., Availability Staffing and Machinery in Motion	Alton, IL	October 2, 2014.
91,120	Inteva Products, LLC	North Kansas City, MO	October 30, 2014.
91,249	Richland Center Foundry LLC, Corporate Development, Inc., and Tres-M Solutions.	Richland Center, WI	December 17, 2014.
91,361	Resin Technology Group LLC, Henkel Corporation, Adhesives Technologies Division.	South Easton, MA	January 4, 2015.
91,381	HTI Hydraulic Technologies, LLC, Ligon Industries, LLC	Galion, OH	January 25, 2015.
91,506	Evergreen Manufacturing Group, LLC, Evergreen Trading Company, LLC.	Madawaska, ME	February 24, 2015.
91,587	RWC, Inc	Bay City, MI	March 12, 2015.
91,611	Sherwin Alumina Company, LLC, CCC Group, McWhorter Electric, MMR Constructors, Inc., etc.	Gregory, TX	March 21, 2015.
91,681	Mikco Manufacturing Technology, Inc	Wallingford, CT	April 8, 2015.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
90,185	Blair LLC, Orchard Brands Corporation, Call Center	Franklin, PA	January 1, 2014.
90,276	Target Corporation, Accounts Payable and Finance Department	Brooklyn Park, MN	January 1, 2014.
91,068	Bombardier Service Corporation	Colchester, VT	October 22, 2014.
91,290	ConAgra Foods, Inc., Enterprise Business Services—OMAHA, IT Department—OMAHA, etc.	Omaha, NE	December 24, 2014.
91,368	Grain Systems, Inc. (GSI), AGCO, Accesspoint, Caresoft Global, Inc., Manpower, Trillium Staffing, etc.	Marshall, MI	January 20, 2015.
91,404	Qual-Pro Corporation, System One Staffing Specialist and TRC Staffing Group.	Gardena, CA	January 27, 2015.
91,484	Vitron Acquisition LLC, The Atlas Group, Hotfoot Recruiters LLC and Experis US Inc.	Phoenix, AZ	February 18, 2015.
91,485	Sensata Technologies, Inc., FKS Schrader Electronics, Performance Sensing Division, Staffmark.	Springfield, TN	February 18, 2015.
91,505	Walgreens Company, Information Technology Division, Walgreens Boots Alliance.	Deerfield, IL	February 1, 2015.
91,505A	Walgreens Company, Information Technology Division, Walgreens Boots Alliance.	Lincolnshire, IL	February 1, 2015.
91,511	Technicolor Home Entertainment Services, FNA Cinram Manufacturing, LLC, Southeast Division, Dynamic Staffing, etc.	Olyphant, PA	February 24, 2015.
91,513	Ball Metal Beverage Container Corp., Ball Corporation, Manpower and Cortech.	Bristol, VA	February 24, 2015.
91,514	Royal Bank of Scotland, Echannels Delivery Team, Global Transactions Services Division, etc.	Chicago, IL	February 24, 2015.
91,518	SABIC US LLC, Specialty Division	Thorndale, PA	February 25, 2015.
91,520	Flex Charlotte, Formerly Flextronics, Global Operations Division, Flex International, etc.	Charlotte, NC	February 25, 2015.

TA–W No.	Subject firm	Location	Impact date
91,597	Plantronics, Inc, Dewinter Group, Inc., Aerotex, and Stephen James Associates.	Santa Cruz, CA	March 14, 2015.
91,597A	Clarity, Plantronics, Inc	Chattanooga, TN	March 14, 2015.
91,597B	Plantronics, Inc., Finance Department, Accounting Group, Aerotek	Santa Cruz, CA	November 6, 2015.
91,601	Trinity Containers, LLC, Trinity Industries, Inc	Quincy, IL	March 9, 2015.
91,612	Cartus Corporation, Realogy Holdings, Inc., Division of Relocation Accounting, Coworx Staffing.	Danbury, CT	March 21, 2015.
91,632	Sanofi-Aventis, US LLC, Industrial Affairs Division, Sanofi, Sanofi-Aventis US, Inc.	Kansas City, MO	June 28, 2016.
91,632A	Pro-Unlimited, Sanofi-Aventis, US LLC, Industrial Affairs Division, Sanofi, etc.	Kansas City, MO	March 25, 2015.
91,662	Howmet Corporation, Whitehall Operations, Alcoa, Inc., Contact Geometric Results, Inc.	Whitehall, MI	April 4, 2015.
91,701	Clover Technologies, LLC, CAU Acquisition, A/K/A Cartridges Are US	Ithaca, MI	April 11, 2015.
91,707	Hewlett Packard Enterprise, Hewlett Packard, ES ITO Network Delivery	Plano, TX	April 14, 2015.
91,721	Yellow Pages Digital &amp; Media Solutions LLC, Print Division, Yellow Pages Group Holding (USA).	Indianapolis, IN	April 21, 2015.
91,734	Ralph Lauren Corporation, Greensboro IT Services, Distinctive Personnel, etc.	Greensboro, NC	April 26, 2015.
91,738	International Business Machines Corporation (IBM), Mainframe Performance and Capacity Management Services Line, etc.	Southbury, CT	April 22, 2015.
91,738A	International Business Machines Corporation (IBM), Mainframe Performance and Capacity Management Services Line, etc.	Poughkeepsie, NY	April 22, 2015.
91,743	Datex-Ohmeda, Inc., GE Healthcare	Madison, WI	April 26, 2015.
91,753	Epicor Software Corporation, EGL Holdco, Inc., EAO Computing, Ruthann Ford, Michael IUPE, etc.	Austin, TX	April 27, 2015.
91,753A	Epicor Software Corporation, EGL Holdco, Inc	Hyannis, MA	April 27, 2015.
91,755	Kraft Heinz Foods Company, Kraft Heinz Company, Kelly Services	Allentown, PA	April 28, 2015.
91,772	Blount International, Inc., Forestry, Lawn, and Garden Division, Express Employment Professionals.	Portland, OR	September 20, 2015.
91,798	Eaton Corporation—Hutchinson Plant, Industrial Sector, Hydraulics Division, Eaton Corporation, Bartech.	Hutchinson, KS	May 11, 2015.
91,813	Xerox, Large Enterprise Operations, US Division	Webster, NY	May 13, 2015.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
91,250	Koppers, Inc	Follansbee, WV	February 1, 2016.
91,250A	Koppers, Inc	Clairton, PA	December 18, 2014.
91,250B	Koppers, Inc	Cicero, IL	December 18, 2014.
91,318	Felman Production, LLC, Georgian American Alloys, Inc., O'Brien's Safety Services, LLC.	Letart, WV	September 11, 2015.
91,800	Medical Business Administration Resources, Inc	South Burlington, VT	May 12, 2015.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1) or (b)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
91,774	Universal Oil Products, Honeywell International Performance Materials, etc.	Des Plaines, IL.	

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
91,757	Lewis Bakery, Vincennes Staffing and Action Staffing	Vincennes, IN.	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
85,382	Baldor Electric Company, Drives Center, ABB Group	Fort Smith, AR.	
90,057	Union Pacific Railroad Company, Twin Cities Service Unit	St. Paul, MN.	
90,158	Steeltek, Inc	Tulsa, OK.	
90,207	National Oilwell Varco, L.P	Tulsa, OK.	
91,029	Mersen USA St. Marys—PA Corp., Mersen USA BN Corp	Saint Marys, PA.	
91,230	BAE Systems RO Defense Inc, BAE Systems, Inc	Hattiesburg, MS.	
91,248	Exal Corporation, Alliance Industrial Solutions and Ryan Alternative Staffing.	Youngstown, OH.	
91,303	Master Halco, Inc., Itochu International, Inc., Employment Solutions of New York.	Scranton, PA.	
91,439	Baker Hughes, Inc., Wireline Systems Division	Grand Prairie, TX.	
91,443	Select Energy Services, LLC, Sit—Truck Yard	Cambridge, OH.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
91,731	Bank of America, Bank of America, N.A	Simi Valley, CA.	
91,784	All-State Sales and Administrative Services	Syracuse, NY.	
91,827	Chandler Industries	Montevideo, MN.	

The following determinations terminating investigations were issued in cases where these petitions were not filed in accordance with the requirements of 29 CFR 90.11. Every petition filed by workers must be signed by at least three individuals of the petitioning worker group. Petitioners separated more than one year prior to the date of the petition cannot be covered under a certification of a petition under Section 223(b), and therefore, may not be part of a petitioning worker group. For one or more of these reasons, these petitions were deemed invalid.

TA–W No.	Subject firm	Location	Impact date
91,756	Schlumberger Technology Corporation, Petroleum Group	Bakersfield, CA.	

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
90,315	Hewlett Packard Enterprise Services	Overland Park, KS.	
91,074	Day & Zimmermann Lone Star LLC, Day & Zimmerman Group, Inc., ManpowerGroup.	East Camden, AR.	
91,406	Osram Sylvania, Inc., Osram Licht AG	Wilmington, MA.	
91,436	Ocwen Loan Servicing, LLC, Ocwen Financial Corporation, GMAC Mortgage, LLC, etc.	Waterloo, IA.	
91,588	Century Aluminum of South Carolina, Inc., Mau Workforce Solutions	Goose Creek, SC.	
91,664	Whelan Security Company, Noranda Aluminum, Inc., Noranda Aluminum Holding Corporation.	New Madrid, MO.	
91,678	Global Integrated Resources, Inc., Dresser, Inc., Dresser Masoneilan, General Electric Measurement, etc.	Avon, MA.	
91,775	Universal Oil Products, Honeywell International Performance Materials, etc.	McCook, IL.	
91,776	Universal Oil Products, Honeywell International Performance Materials, etc.	Chickasaw, AL.	

The following determinations terminating investigations were issued because the petitions are the subject of ongoing investigations under petitions filed earlier covering the same petitioners.

TA–W No.	Subject firm	Location	Impact date
91,863	Remington Outdoor Company	Hickory, KY.	

I hereby certify that the aforementioned determinations were issued during the period of *May 23, 2016 through June 3, 2016.* These determinations are available on the Department's Web site *https://www.doleta.gov/tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations. or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 7th day of June 2016.

Jessica R. Webster

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–15252 Filed 6–27–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,557D]

Ericsson Inc., Wireless Core Group, Including On-Site Leased Workers From Hewlett Packard Enterprise Services and Kforce Staffing Solutions, Overland Park, Kansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 2, 2013, applicable to workers of Ericsson Inc., Wireless Core Group, Overland Park, Kansas (Ericsson). On November 7, 2014, the Department issued an amended certification. Workers of Ericsson are engaged in activities related to the supply of technical support of wireless core network elements for end users.

At the request of a state workforce office, the Department reviewed the certification for workers of the subject firm.

The Department has determined that workers of Hewlett Packard Enterprise Services and Kforce Staffing Solutions were sufficiently under the operational control of the subject firm to be considered on-site leased workers.

The amended notice applicable to TA–W–82,557 is hereby issued as follows:

> All workers of Ericsson Inc., Wireless Core Group, including on-site leased workers from Hewlett Packard Enterprise Services and Kforce Staffing Solutions, Overland Park, Kansas (TA–W–82,557D) who became totally or partially separated from employment on or after March 12, 2012 through April 2, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 1st day of June 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–15254 Filed 6–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

[TA–W–90,166; TA–W–90,166A]

Employment and Training Administration

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–90,166, Dresser, Inc. also known as Dresser Masoneilan General Electric Measurement and Control. A Sub-Division of General Electric—Oil & Gas, Avon, Massachusetts

TA–W–90,166A, Kelly Services, Need, OP Amp, Softek, Aerotek, APN Software Solutions, and Global Integrated Resources, Inc. Working on–site at Dresser, Inc. also known as Dresser Masoneilan General Electric Measurement and Control. A Sub-Division of General Electric—Oil & Gas, Avon, Massachusetts

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 13, 2015 applicable to workers of Dresser, Inc., also known as Dresser Masoneilan, General Electric Measurement and Control division, a sub-division of General Electric—Oil & Gas, including on-site leased workers from Kelly Services, NEED, OP Amp, Softek, Aerotek, and APN Software Solutions, Avon, Massachusetts. The Department's notice of determination was published in the **Federal Register** on January 11, 2016 (81 FR 1227).

At the request of the authorized representative of Global Integrated Resources, Inc., the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of industrial control valves for oil, gas, severe service, nuclear applications, and parts and components.

The company reports that workers leased from Global Integrated Resources, Inc. were employed on-site at Dresser, Inc., also known as Dresser Masoneilan, General Electric Measurement and Control Division, a sub-division of General Electric—Oil & Gas, Avon, Massachusetts. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Global Integrated Resources, Inc., working on-site at Dresser, Inc., also known as Dresser Masoneilan, General Electric Measurement and Control Division, a sub-division of General Electric—Oil & Gas, Avon, Massachusetts.

The amended notice applicable to TA–W–90,166 and TA–W–90,166A is hereby issued as follows:

> All workers of Dresser, Inc., also known as Dresser Masoneilan, General Electric Measurement and Control division, a sub-division of General Electric—Oil & Gas, Avon, Massachusetts, who became totally or partially separated from employment on or after May 9, 2015 through November 13, 2017, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended;
>
> AND,
>
> All workers of Kelly Services, NEED, Op Amp, Softek, Aerotek, APN Software Solutions, and Global Integrated Resources, Inc. working on-site at Dresser, Inc., also known as Dresser Masoneilan, General Electric Measurement and Control division, a sub-division of General Electric—Oil & Gas, Avon, Massachusetts (TA–W–90,166A), who became totally or partially separated from employment on or after January 1, 2014 through November 13, 2017, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 31st day of May 2016.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2016–15251 Filed 6–27–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, no later than July 8, 2016.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 8, 2016.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of June 2016.

Jessica R. Webster,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[46 TAA petitions instituted between 5/23/16 and 6/3/16]

TA–W No.	Subject firm (petitioners)	Location	Date of institution	Date of petition
91832	Kennametal—Office in home (State/ One-Stop)	Lindon, UT	05/23/16	05/19/16
91833	EMC Corporation (Workers)	Hopkinton, MA	05/23/16	04/19/16
91834	IBM (State/One-Stop)	Boulder and Denver, CO	05/23/16	05/20/16
91835	Xcel Energy Services Inc. (State/One-Stop)	Denver, CO	05/23/16	05/20/16
91836	Gates Corporation (Company)	Elizabethtown, KY	05/23/16	05/20/16
91837	ConocoPhillips (State/One-Stop)	Bartlesville, OK	05/24/16	05/23/16
91838	Crawford & Company (Company)	Sunrise, FL	05/24/16	05/23/16
91839	Crawford & Company (Company)	Lake Zurich, IL	05/25/16	05/25/16
91840	Crawford & Company (Company)	Atlanta, GA	05/25/16	05/25/16
91841	Hancock Fabric (Workers)	Baldwyn, MS	05/25/16	05/20/16
91842	Hewlett Packard Enterprise Services (State/One-Stop)	Jersey City, NJ	05/25/16	05/24/16
91843	Magellan Aerospace d/b/a Ambel Precision Manufacturing (State/One-Stop).	Bethel, CT	05/25/16	05/24/16
91844	MediGain (State/One-Stop)	Upper Saddle River, NJ	05/25/16	05/24/16
91845	Olympic Panel Products LLC (Union)	Shelton, WA	05/25/16	05/24/16
91846	Sykes Enterprises (Workers)	Langhorne, PA	05/25/16	05/24/16
91847	Teledyne Blueview (State/One-Stop)	Bothell, WA	05/25/16	05/23/16
91848	United States Steel Corporation (Workers)	Pittsburgh, PA	05/25/16	05/24/16
91849	Vallourec Drilling Products USA, Inc. (Company)	Houston, TX	05/25/16	05/24/16
91850	Big Sandy Woodyard (State/One-Stop)	Camden, Dover, Bethel Springs, TN & Wickliffe, KY.	05/25/16	05/24/16
91851	ZF TRW (Union)	Lafayette, IN	05/25/16	05/25/16
91852	Howden North America Inc. (Workers)	Akron, OH	05/26/16	05/24/16
91853	Yellow Pages Group (Workers)	Blue Bell, PA	05/26/16	05/16/16
91854	Polartec LLC (Union)	Lawrence, MA	05/26/16	05/25/16
91855	Ch2m (Workers)	Englewood, CO	05/26/16	05/12/16
91856	Oklahoma Department of Human Services (Workers)	Lawton, OK	05/26/16	05/25/16
91857	Laird Technologies (State/One-Stop)	Schaumburg, IL	05/26/16	05/25/16
91858	John Crane (State/One-Stop)	Morton Grove, IL	05/26/16	05/25/16
91859	MSE Technologies LLC (Company)	Van Nuys, CA	05/26/16	05/25/16
91860	3M Cuno (State/One-Stop)	Meriden, CT	05/26/16	05/26/16
91861	Donald L Shirley Lumber Co. Inc. (Company)	New Bethlehem, PA	05/26/16	05/25/16
91862	Union Pacific Railroad (Union)	North Platte, NE	05/27/16	05/26/16
91863	Remington Outdoor Company (Workers)	Hickory, KY	05/27/16	05/26/16
91864	Quantum Medical Imaging (Subsidiary of Carestream) (Company).	Ronkonkoma, NY	05/27/16	05/26/16
91865	DLA, Inc. (Company)	Doral, FL	05/27/16	05/26/16
91866	Chandler Industries (State/One-Stop)	Littleton, CO	05/31/16	05/27/16
91867	Agilent Technologies, Inc. (State/One-Stop)	Danbury, CT	05/31/16	05/31/16
91868	Hewlett Packard, Inc. (State/One-Stop)	Vancouver, WA	05/31/16	05/26/16
91869	MechoShade Systems (Company)	Phoenix, AZ	06/01/16	05/31/16
91870	IBM Global Services (State/One-Stop)	Omaha, NE	06/01/16	05/31/16
91871	Sun Dental Labs, LLC (Workers)	St. Petersburg, FL	06/02/16	06/01/16
91872	Liberty Mutual Insurance (Workers)	New Castle, PA	06/02/16	06/01/16
91873	Applegate Livestock Equipment Inc. (Workers)	Union City, IN	06/02/16	06/01/16

APPENDIX—Continued

[46 TAA petitions instituted between 5/23/16 and 6/3/16]

TA–W No.	Subject firm (petitioners)	Location	Date of institution	Date of petition
91874	United Healthcare (State/One-Stop)	Richardson, TX	06/03/16	06/01/16
91875	Manitowoc Company (Union)	Manitowoc, WI	06/03/16	06/02/16
91876	Cleaver Brooks (State/One-Stop)	Lincoln, NE	06/03/16	06/02/16
91877	IAC Acoustics, formerly GT Exhaust (State/One-Stop)	Lincoln, NE	06/03/16	06/02/16

[FR Doc. 2016–15253 Filed 6–27–16; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the "Census of Fatal Occupational Injuries." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 29, 2016.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to (202) 691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, at (202) 691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) was delegated responsibility by the Secretary of Labor for implementing Section 24(a) of the Occupational Safety and Health Act of 1970. This section states that "the Secretary shall compile accurate statistics on work injuries and illnesses which shall include all disabling, serious, or significant injuries and illnesses . . ."

Prior to the implementation of the Census of Fatal Occupational Injuries (CFOI), the BLS generated estimates of occupational fatalities for private sector employers from a sample survey of about 280,000 establishments. Studies showed that occupational fatalities were underreported in those estimates as well as in those compiled by regulatory, vital statistics, and workers' compensation systems. Estimates prior to the CFOI varied widely, ranging from 3,000 to 10,000 fatal work injuries annually. In addition, information needed to develop prevention strategies were often missing from these earlier programs.

In the late 1980s, the National Academy of Sciences study, *Counting Injuries and Illnesses in the Workplace,* and another report, *Keystone National Policy Dialogue on Work-Related Illness and Injury Recordkeeping,* emphasized the need for the BLS to compile a complete roster of work-related fatalities because of concern over the accuracy of using a sample survey to estimate the incidence of occupational fatalities. These studies also recommended the use of all available data sources to compile detailed information for fatality prevention efforts.

The BLS tested the feasibility of collecting fatality data in this manner in 1989 and 1990. The resulting CFOI was implemented in 32 States in 1991. National data covering all 50 States, New York City, and the District of Columbia have been compiled and published annually for years 1992 through 2014, approximately eight months after the end of each calendar year.

The CFOI compiles comprehensive, accurate, and timely information on work-injury fatalities needed to develop effective prevention strategies. The system collects information concerning the incident, the demographic information of the deceased, and the characteristics of the employer.

Data are used to:

- Develop employee safety training programs.
- Develop and assess the effectiveness of safety standards.
- Conduct research for developing prevention strategies.

In addition, State partners use the data to publish State reports, to identify State-specific hazards, to allocate resources for promoting safety in the workplace, and to evaluate the quality of work life in the State.

II. Current Action

Office of Management and Budget clearance is being sought for the Census of Fatal Occupational Injuries.

In 2014, 4,821 workers lost their lives as a result of injuries received on the job. This official systematic, verifiable count mutes controversy over the various counts from different sources. The CFOI count has been adopted by the National Safety Council and other organizations as the sole source of a comprehensive count of fatal work injuries for the U.S. If this information were not collected, the confusion over the number and patterns in fatal occupational injuries would hamper prevention efforts. By providing timely occupational fatality data, the CFOI provides safety and health managers the information necessary to respond to emerging workplace hazards.

During 2015, BLS national office responded to approximately 900 requests for CFOI data from various organizations. (This figure excludes requests received by the States for State-specific data.) In addition, the CFOI page of the BLS Web site averaged about 13,100 users per month in 2015.

National office staff also responded to numerous requests from safety organizations for staff members to participate in safety conferences and seminars. The CFOI research file, made available to safety and health groups, is being used by 19 organizations. Study topics include fatalities by worker demographic category (young workers, older workers, Hispanic workers); by occupation or industry (construction workers, police officers, firefighters, landscaping workers, workers in oil and gas extraction); by event (heat-related fatalities, fatalities from workplace violence, suicides, falls from ladders); or other research such as safety and health program effectiveness and the impact of fatality risk on wages. A current list of research articles and reports that include CFOI data can be found here: *http://www.bls.gov/iif/publications.htm.*

Beginning with the 2015 reference year, final data from the Census of Fatal Occupational Injuries (CFOI) will be released in December—4 months earlier than in past years. This December release will be the only release of CFOI data for 2015. A similar schedule will be followed in subsequent years. Preliminary releases, which normally appeared in August or September in past years, will no longer be produced.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Census of Fatal Occupational Injuries.

OMB Number: 1220–0133.

Affected Public: Federal government; Individuals or households; Private sector (Business or other for-profits, Not-for-profit institutions, Farms); State, local, or tribal governments.

Frequency: On occasion.

Type of form	Number of respondents	Number of responses	Burden hours	Average response time
BLS CFOI–1	1,419	1,419	473	20 minutes per document.
Source documents—Federal	7	11	70	10 hours per year per agency.
Source documents—State, local, and tribal	220	15,019	2,503	10 minutes per document.
Totals	1,646	16,449	3,046	

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 23rd day of June 2016.

Kimberly Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–15260 Filed 6–27–16; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL CREDIT UNION ADMINISTRATION

Modernizing Data Collection for Regulatory Oversight of Credit Unions: Extension of Comment Period

AGENCY: National Credit Union Administration.

ACTION: Extension of comment period.

SUMMARY: The National Credit Union Administration (NCUA) is extending the deadline for the submission of written comments in response to its June 7, 2016 Request for Information regarding modernizing data collection for regulatory oversight of credit unions.

DATES: Comments are now due no later than 5:00 p.m. Eastern Time on August 15, 2016.

ADDRESSES: Comments may be submitted using *one* of the methods below. (Please do not send comments via multiple methods.) Include "[Your name and company name (if any)]—Call Report/Profile Content Modernization" in all correspondence.

- *Mail:* Please direct written comments related to Call Report/Profile content modernization to Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314.
- *Email:* Address to *CallReportMod@ncua.gov.* Any of the following formats is acceptable: HTML, ASCII, Word, RTF, or PDF.

NCUA will post all material received by the deadline on the agency Web site (*www.ncua.gov*) without alteration or redaction, so commenters should not include information they do not wish public (*e.g.,* personal or confidential business information). SPAM or marketing materials will be discarded without publication.

FOR FURTHER INFORMATION CONTACT: Mark Vaughan, National Credit Union Administration, Office of Examination and Insurance, 1775 Duke Street, Alexandria, VA 22314, telephone (703) 518–6622, email *mvaughan@ncua.gov.* Media inquiries should be directed to the NCUA Office of Public and Congressional Affairs at (703) 518–6671 or *pacamail@ncua.gov.*

SUPPLEMENTARY INFORMATION: NCUA is conducting a comprehensive review of two vehicles used to collect information for regulatory oversight of federally insured credit unions—the 5300 Call Report and Form 4501A Profile. On June 7, 2016, NCUA issued a Request for Information seeking public input on several questions relating to that topic. *See* 81 FR 36600 (June 7, 2016). Due to the importance of this issue, and to ensure that commenters have sufficient time to respond, NCUA is extending the deadline for the submission of initial comments in response to the Request for Information to 5:00 p.m. Eastern Time on August 15, 2016.

Dated: June 22, 2016.

Gerard S. Poliquin,

Secretary of the Board.

[FR Doc. 2016–15166 Filed 6–27–16; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before July 28, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0092.

Type of Review: Reinstatement, with change, of a previously approved collection.

Title: Loans to Members and Lines of Credit to Members, 12 CFR 701.21 and 12 CFR 741.

Abstract: Section 107(5) of the Federal Credit Union Act authorizes Federal Credit Unions to make loans to members and issue lines of credit (including credit cards) to members. Part 741 of NCUA's rules and regulations established requirements for all federally insured credit unions related to loans to members and lines of credit union members. Additionally, NCUA's rules and regulations at § 701.21 establish additional requirements related to loans to members and lines of credit to members for federal credit unions. These regulations include various information collections to ensure credit unions comply with applicable laws and operate in a safe and sound manner.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 423,451.

OMB Number: 3133–0127.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Purchase, Sale and Pledge of Eligible Obligations, 12 CFR 701.23.

Abstract: The Federal Credit Union Act limits the amount of eligible obligations a federal credit union is permitted to purchase, sell, pledge, discount, receive or dispose of under Section 107(13), 12 U.S.C. 107. NCUA's rules and regulations further govern this limitation by prescribing additional requirements under § 701.23. The various information collections are in place to ensure a federal credit union's activities related to the purchase, sale, and pledge of eligible obligations comply with applicable laws and are conducted in a safe and sound manner.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 10,540.

OMB Number: 3133–0134.

Type of Review: Reinstatement with change of a previously approved collection.

Title: Account Based Disclosures in Connection with 12 CFR part 707.

Abstract: NCUA's Truth in Savings Act (TISA) regulation (12 CFR 707.4, 707.5, 707.6, 707.8) requires credit unions to provide specific disclosures when an account is opened, when a disclosed term changes or a term account is close to renewal, on periodic statements of account activity, in advertisements, and upon a member's or potential member's request. Credit unions that provide periodic statements are required to include information about fees imposed, the annual percentage yield earned during those statement periods, and other account terms.

The requirements for creating and disseminating account disclosures, change in terms notices, term share renewal notices, statement disclosures, and advertising disclosures are necessary to implement TISA's purpose of providing the public with information that will permit informed comparisons of accounts at depository institutions.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Annual Burden Hours: 438,852.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on June 22, 2016.

Dated: June 22, 2016.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2016–15159 Filed 6–27–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2016–0001]

Sunshine Act Meeting Notice

DATE: June, 27, July 4, 11, 18, 25, August 1, 2016.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 27, 2016

Tuesday, June 28, 2016

9:30 a.m.—Briefing on Human Capital and Equal Opportunity Employment (Public Meeting) (Contact: Kristin Davis: 301–287–0707)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 4, 2016—Tentative

Thursday, July 7, 2016

9:30 a.m.—Strategic Programmatic Overview of the Reactors Operating Business Line (Public Meeting) (Contact: Trent Wertz: 301–415–1568)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 11, 2016—Tentative

There are no meetings scheduled for the week of July 11, 2016.

Week of July 18, 2016—Tentative

Thursday, July 21, 2016

9:30 a.m.—Briefing on Project Aim (Public Meeting) (Contact: Janelle Jessie: 301–415–6775)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 25, 2016—Tentative

Thursday, July 28, 2016

9:00 a.m.—Hearing on Combined Licenses for Levy Nuclear Plant, Units 1 and 2: Section 189a. of the Atomic Energy Act Proceeding (Public Meeting) (Contact: Donald Habib: 301–415–1035)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of August 1, 2016—Tentative

There are no meetings scheduled for the week of August 1, 2016.

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.*

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* Braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 24, 2016.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2016–15380 Filed 6–24–16; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–226]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 29, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–226; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 21, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* June 29, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–15187 Filed 6–27–16; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. Title and purpose of information collection: Evidence of Marital Relationship, Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under Sections 2(c) or 2(d) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of the employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence, the RRB needs to determine if a valid marriage existed between a spouse or widow(er) annuity applicant and a railroad employee. The RRB utilizes Forms G–124, Individual Statement of Marital Relationship; G–124a, Certification of Marriage Information; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment, to secure the needed information. One response is requested of each respondent. Completion is required to obtain benefits.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (81 FR 24904 on April 27, 2016) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Evidence of Marital Relationship—Living with Requirements.

OMB Control Number: 3220–0021.

Form(s) submitted: G–124, G–124A, G–237, G–238 and G–238A.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: Under the RRA, to obtain a benefit as a spouse of an employee annuitant or as the widow(er) of the deceased employee, an applicant must submit information to be used to determine if the marriage requirements for such benefits have been met. The collection obtains information supporting claimed common-law marriage, termination of previous marriages, and residency requirements.

Changes proposed: The RRB proposes minor non-burden impacting changes to the forms in the collection.

The burden estimate for the ICR is as follows:

Form No.	Annual Responses	Time (minutes)	Burden (hours)
G–124 (in person)	125	15	31
G–124 (by mail)	75	20	25
G–124a	300	10	50
G–237 (in person)	75	15	19
G–237 (by mail)	75	20	25
G–238 (in person)	150	3	8
G–238 (by mail)	150	5	13
G–238a	150	10	25
Total	1,100		196

2. Voluntary Customer Surveys in Accordance with E.O. 12862; OMB 3220–0192. In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (81 FR 24905 on April 27, 2016) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Voluntary Customer Surveys in Accordance with E.O. 12862.

OMB Control Number: 3220–0192.

Form(s) submitted: G–201.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or Households.

Abstract: The Railroad Retirement Board (RRB) utilizes voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other measures of quality service. Surveys involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

Changes proposed: The RRB proposes no changes to the collection.

The burden estimate for the ICR is as follows: The average burden per response for customer satisfaction activities is estimated to range from 2 minutes for a Web site questionnaire to 2 hours for participation in a focus group. The RRB estimates an annual burden of 1,620 annual respondents totaling 731 hours for the generic customer survey clearance. One response is requested of each respondent. Completion is required to obtain a benefit.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.* Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2016–15153 Filed 6–27–16; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78124; File No. SR-Phlx-2016–68]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to SPY Position Limits

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend for another twelve (12) month time period the pilot program to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY"),[3] which list and trade under the symbol SPY ("SPY Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Rule 1001 (Position Limits) to extend the current pilot which expires on July 12, 2016 for an additional twelve (12) month time period to July 12, 2017 ("Extended Pilot"). This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits; (2) the liquidity of the option and the underlying security; (3) the market capitalization of the underlying security and the related index; (4) the reporting of large positions and requirements surrounding margin; and (5) the potential for market on close volatility.

With this proposal, the Exchange submits the SPY report to the Commission, which report reflects, during the time period from May 2015 through May 2016, the trading of standardized SPY options with no position limits consistent with option exchange provisions.[4] The report was prepared in the manner specified in the Exchange's prior rule filing extending the SPY Pilot Program.[5] The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. The proposed extension will allow the Exchange and the Commission additional time to further evaluate the pilot program and its effect on the market.

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that a SPY Pilot Report will be submitted at least thirty (30) days before the end of the Extended Pilot and would analyze that period. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the Extended Pilot. The Pilot Report will compare the impact of the SPY Pilot Program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration during the Extended Pilot. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program. Conditional on the findings in the SPY Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot. If the SPY Pilot Program is not extended or adopted on a permanent basis by the expiration of the Extended Pilot, the position limits for SPY options would revert to limits in effect prior to the commencement of the SPY Pilot Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[4] The report is attached as Exhibit 3.

[5] *See* Securities Exchange Act Release No. 75414 (July 9, 2015), 80 FR 41538 (July 15, 2015) (SR–PHLX–2015–60).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed as a competitive response to similar filings that the Exchange expects to be filed by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for a multiply listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–68, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15174 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78125; File No. SR–BX–2016–030]

Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Elimination of SPY Position Limits

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, NASDAQ BX, Inc. ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend for another twelve (12) month time period the pilot program to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY"),[3] which list and trade under the symbol SPY ("SPY Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Supplementary Material at the end of Chapter III, Section 7 (Position Limits) to extend the current pilot which expires on July 12, 2016 for an additional twelve (12) month time period to July 12, 2017 ("Extended Pilot"). This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits; (2) the liquidity of the option and the underlying security; (3) the market capitalization of the underlying security and the related index; (4) the reporting of large positions and requirements surrounding margin; and (5) the potential for market on close volatility.

With this proposal, the Exchange submits the SPY report to the Commission, which report reflects, during the time period from May 2015 through May 2016, the trading of standardized SPY options with no position limits consistent with option exchange provisions.[4] The report was prepared in the manner specified in the Exchange's prior rule filing extending the SPY Pilot Program.[5] The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. The proposed extension will allow the Exchange and the Commission additional time to further evaluate the pilot program and its effect on the market.

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that a SPY Pilot Report will be submitted at least thirty (30) days before the end of the Extended Pilot and would analyze that period. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the Extended Pilot. The Pilot Report will compare the impact of the SPY Pilot Program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration during the Extended Pilot. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program. Conditional on the findings in the SPY Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot. If the SPY Pilot Program is not extended or adopted on a permanent basis by the expiration of the Extended Pilot, the position limits for SPY options would revert to limits in effect prior to the commencement of the SPY Pilot Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed as a competitive response to similar filings that the Exchange expects to be filed by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for a multiply listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[4] The report is attached as Exhibit 3.

[5] *See* Securities Exchange Act Release No. 75412 (July 9, 2015), 80 FR 41517 (July 15, 2015) (SR–BX–2015–039).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2016–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2016–030, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15175 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78131; File No. SR–CBOE–2016–052]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend a Pilot Program that Eliminates Position and Exercise Limits for Physically-Settled SPDR S&P 500 ETF Trust ("SPY") Options

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend the operation of a pilot program that eliminates position and exercise limits for physically-settled SPY options ("SPY Pilot Program"). The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 4.11. Position Limits

No changes.

. . . Interpretations and Policies:

.01–.06 No change.

.07 The position limits under Rule 4.11 applicable to options on shares or other securities that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that satisfy the criteria set forth in Interpretation and Policy .06 under Rule 5.3 shall be the same as the position limits applicable to equity options under Rule 4.11 and Interpretations and Policies thereunder; except that the position limits under Rule 4.11 applicable to option contracts on the securities listed in the below chart are as follows:

Security underlying option	Position limit
The DIAMONDS Trust (DIA)	300,000 contracts.
The Standard and Poor's Depositary Receipt Trust (SPY)	None.
The iShares Russell 2000 Index Fund (IWM)	500,000 contracts.
The PowerShares QQQ Trust (QQQ)	900,000 contracts.
The iShares MSCI Emerging Markets Index Fund (EEM)	500,000 contracts.

Position limits for SPY options are subject to a pilot program through [July 12, 2016] *July 12, 2017.*

.08 No change.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Interpretation and Policy .07 to Rule 4.11 (Position Limits) to extend the duration of the SPY Pilot Program.[5] The SPY Pilot Program is currently scheduled to expire on July 12, 2016 and this proposal would extend the SPY Pilot Program through July 12, 2017. There are no substantive changes being proposed to the SPY Pilot Program.

In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported its original proposal to establish the SPY Pilot Program, which include: (1) The liquidity of the option and the underlying security; (2) the market capitalization of the underlying security and the securities that make up the S&P 500 Index; (3) options reporting requirements; and (4) financial requirements imposed by CBOE and the Commission. When the SPY Pilot Program was most recently renewed in July 2015, CBOE submitted a report providing an analysis of the SPY Pilot Program during the period January 2014 through May 2015 (the "Pilot Report"). In the July 2015 extension, the Exchange stated that if it were to submit a proposal to either extend the SPY Pilot Program, adopt the SPY Pilot Program on a permanent basis, or terminate the SPY Pilot Program, it would submit another Pilot Report covering the period since the previous extension.[6] Accordingly, the Exchange is submitting another Pilot Report that details CBOE's experience with the SPY Pilot Program. The Pilot Report now includes the period of June 2015 through April 2016. The Pilot Report is attached as Exhibit 3. CBOE notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. In extending the SPY Pilot Program, the Exchange states that if CBOE were to propose another extension, permanent approval or termination of the SPY Pilot Program, the Exchange will submit another Pilot Report covering the period since the previous extension, which will be submitted at least 30 days before the end of the proposed extension. If the SPY Pilot Program is not extended or adopted on a permanent basis by July 12, 2017, position limits in SPY will revert to their Pre-Pilot levels.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs. Extending the SPY Pilot Program will give the Exchange and the Commission additional time to evaluate the pilot and its effect on the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the SPY Pilot Program to continue as the Exchange expects other SROs will propose similar extensions.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay, noting that such waiver will allow the Exchange to extend the pilot program prior to its expiration on July 12, 2016. In addition, the Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow for the least amount of market disruption as the pilot will continue as it currently does maintaining the status quo. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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[5] *See* Securities Exchange Act Release Nos. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR–CBOE–2012–091); 70878 (November 14, 2013), 78 FR 69737 (November 20, 2013) (SR–CBOE–2013–106); 74149 (January 27, 2015) 80 FR 5606 (February 2, 2015) (SR–CBOE–2015–008); and 75381 (July 7, 2015) 80 FR 40111 (July 13, 2015) (SR–CBOE–2015–065).

[6] *See* 80 FR at 40112.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2016–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–052, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15179 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78122; File No. SR-BatsBYX–2016–12]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c) ("Fee Schedule") to: (i) Add fee codes NA and NB; (ii) reduce the rebate for fee codes BB, N, and W; (iii) add Add Volume Tier 2 under footnote 1; and (iv) add Remove Volume Tier under footnote 1.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Add fee codes NA and NB; (ii) reduce the rebate for fee codes BB, N, and W; (iii) add Add Volume Tier 2 under footnote 1; and (iv) add Remove Volume Tier under footnote 1.

Fee Codes NA and NB

The Exchange previously filed a proposed rule change with the Commission to identify Non-Displayed Orders[6] as such when routed to an away Trading Center.[7] The Exchange intends to implement this functionality on June 1, 2016.[8] Because other Trading Centers typically provide different rebates or fees with respect to non-displayed liquidity the Exchange proposes to amend its Fee Schedule to add fee codes NA and NB, which would apply to routed Non-Displayed Orders. Proposed fee code NA would be applied to Non-Displayed Orders that are routed to and add liquidity on Bats EDGX Exchange, Inc. ("EDGX"), Bats BZX Exchange, Inc. ("BZX"), the New York

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.9(c)(11).

[7] The Exchange notes that the Exchange also amended its rules to route Reserve Orders (as defined in Rule 11.9(c)(1)) as such to other Trading Centers. *See* Securities Exchange Act 77187 (February 19, 2016), 81 FR 9556 (February 25, 2016) (SR–BYX–2016–04). Non-Displayed Orders and Reserve Orders would be handled in accordance with the rules of the Trading Center to which they are routed. *Id.* This proposal does not impact the routing of Reserve Orders.

[8] *See Bats Announces Support for Hidden Post-to-Away Routed Orders,available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf.*

Stock Exchange, Inc. ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT"), or the Nasdaq Stock Market LLC ("Nasdaq").[9] Orders that yield fee code NA would not be charged a fee nor receive a rebate in both securities priced at or above $1.00 or below $1.00. Proposed fee code NB would be applied to Non-Displayed Orders that are routed to and add liquidity on any exchange not listed in proposed fee code NA. Orders that yield fee code NB would be charged a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's total dollar value in securities priced below $1.00.

Fee Codes BB, N, and W

Fee codes BB, N, and W are appended to orders that are to receive the standard rebate of $0.00150 per share for removing liquidity in securities priced at or above $1.00.[10] Fee code W is appended to order in Tape A Securities, fee code BB is appended to orders in Tape B securities, and fee code N is appended to orders in Tape C Securities. The Exchange now proposes to reduce the standard rebate provided for under fee codes, BB, N, and W from $00.150 per share to $0.00100 per share. The Exchange also proposes to amend the Fee Schedule's Standard Rates table to reflect the amended standard removal rate under fee codes BB, N, and W.

Add Volume Tier 2

Currently, the Exchange charges a standard rate of $0.0018 per share for orders that add liquidity. Members may be charged a reduced fee of $0.0014 per share under footnote 1 where they have an ADAV[11] equal to or greater than 0.30% of the TCV.[12] The Exchange proposes to name this existing tier under footnote 1 the "Add Volume Tier 1" and add a new tier called the "Add Volume Tier 2". Under the proposed Add Volume Tier 2, Members would be eligible to receive a reduced fee of $0.0013 per share where they have an ADAV equal to or greater than 0.40% of the TCV.

Add Remove Volume Tier

Currently, the Exchange does not offer an enhanced rebate for removing liquidity. Such orders would receive the standard rebate under fee codes BB, N, and W described above. The Exchange now proposes to provide an enhanced rebate for removing liquidity by adding the Remove Volume Tier under footnote 1. Under the proposed Remove Volume Tier, a Member's orders that yield fee codes BB, N, or W would receive a rebate of $0.00150 per share where the Member has an ADV equal to or greater than 0.05% of the TCV.

The Exchange also proposes to append footnote 1 to fee codes BB, N, and W as orders that yield those fee codes would be eligible to receive the enhanced rebate of $0.00150 provided for by the proposed Remove Volume Tier. With the addition of the Remove Volume Tier, the Exchange proposes to amend the title of footnote 1 from "Add Volume Tier" to "Add/Remove Volume Tiers".

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed fee codes are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rates remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

In particular, the Exchange believes that proposed fee codes NA and NB represent an equitable allocation of reasonable dues, fees, and other charges. The proposed fees are similar to and based on the fees and rebates assessed or provided to Bats Trading when routing to away Trading Centers. For instance, like proposed fee code NA, the NYSE, NYSE Arca, and Nasdaq charge no fee nor provide a rebate for non-displayed orders that add liquidity.[16] In addition, the exchanges that would be covered by proposed fee code NB charge a fee of up to $0.0030 per share to add liquidity.[17] In addition, the proposed rate for fee code NB is equal to or greater than similar routing fees charged by other exchanges. For example, the NYSE, NYSE MKT, Nasdaq, and BZX charge a fee of $0.0030 per share and NYSE Arca charges a fee of $0.0035 per share regardless of which destination the order is routed.[18]

The Exchange notes that routing through Bats Trading is voluntary. The Exchange is providing a service to allow Members to post Non-Displayed Orders to these destinations and that those Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provided the rebate from that destination. Therefore, the Exchange believes the rates for proposed fee codes NA and NB are equitable and reasonable because they are related to the rates provided by the away exchange and reasonably account for the routing service provided for by the Exchange. Lastly, the Exchange believes that the proposed amendments are non-discriminatory because it applies uniformly to all Members and that the proposed rates are directly related to rates provided by the destinations to which the orders may be routed.

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[9] Today, all orders that are routed to post to an away market are routed for display on such market and receive the following rates: (i) Rebate of $0.0015 per share for orders routed to the NYSE; (ii) rebate of $0.0021 per share for Tapes A and C securities and a rebate of $0.0022 per share for Tape B securities for orders routed to NYSE Arca; (iii) rebate of $0.0015 per share for orders routed to NYSE MKT; (iv) rebate of $0.0015 per share for orders routed to Nasdaq; and (v) a rebate of $0.0020 per share for orders routed to EDGX or BZX. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/byx/*. These rates generally represent a pass through of the rate that Bats Trading, Inc. ("Bats Trading"), the Exchange's affiliated routing broker-dealer, is provided for adding displayed liquidity at NYSE, NYSE Arca, NYSE MKT, Nasdaq, EDGX, or BZX when it does not qualify for a volume tiered reduced fee or enhanced rebate.

[10] Order that remove liquidity in securities priced below $1.00 are charged 0.10% of the trades total dollar value. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/byx/*. The Exchange does not proposes to amend the standard rate for securities priced below $1.00.

[11] As provided in the Fee Schedule, "ADAV" means average daily added volume calculated as the number of shares added per day.

[12] As provided in the Fee Schedule, "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[13] The Exchange initially filed the proposed fee change on May 31, 2016 (SR–BatsBYX–2016–11). On June 8, 2016, the Exchange withdrew SR–BatsBYX–2016–11 and submitted this filing.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] *See* the NYSE fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* (dated May 23, 2016); the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated May 23, 2016); *and* the Nasdaq fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*. The Exchange notes that NYSE MKT, EDGX, and BZX provide a rebate of $0.0016, $ 0.0015, and $0.0017 per share respectively for non-displayed orders that add liquidity. *See* the NYSE MKT fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf* (dated May 23, 2016); the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/; and* the BZX fee schedule *available at http://batstrading.com/support/fee_schedule/bzx/*.

[17] *See* the Bats EDGA Exchange, Inc. fee schedule *available at http://batstrading.com/support/fee_schedule/edga/;* and the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing*. The Exchange notes that it currently does not provide for routing orders to post on the Chicago Stock Exchange, Inc. or the National Stock Exchange, Inc.

[18] *See supra* note 16. Nasdaq charges a fee of $0.0035 per share for routed orders that are directed to another market. *See* the Nasdaq fee schedule *at id.*

The Exchange also believes that proposed changes to fee codes BB, N, and W represent an equitable allocation of reasonable dues, fees, and other charges because the Exchange's standard rebate for removing liquidity continues to be higher than that provided by other exchanges. For example, Nasdaq BX, Inc. BX provides a standard rebate of $0.0006 per share for orders that remove liquidity.[19]

Volume-based rebates such as that proposed herein have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tiers are a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates, because they will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the Add Volume Tier 2 and Remove Volume Tier are a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the proposed tiers represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tiers encourages Members to add liquidity to the BYX Book[20] each month. Specifically, the Exchange notes that the criteria and reduced rate under Add Volume Tier 2 are equitable and reasonable as compared to other tiers offered by the Exchange. For example, under Add Volume Tier 1, Members may receive a reduced fee of $0.0013 per share where they have an ADAV equal to or greater than 0.30% of the TCV. To receive a reduced fee of $0.0014 per share under the proposed Add Volume Tier 2, a Member must have an ADAV equal to or greater than 0.40% of the TCV. Therefore, the Exchange believes the proposed Add Volume Tier 2 is consistent with Section 6(b)(4)[21] of the Act as the more stringent criteria correlates with the tier's reduced rate.

The Exchange also believes the proposed Remove Volume Tier's criteria and rate are reasonable when compare to tier provided for by other exchanges. For example, Nasdaq BX, Inc. BX also provides an enhanced rebate of $0.0015 per share but require different, but similar, criteria.[22] In order to achieve the tier, Nasdaq BX, Inc. requires their members to remove at least 0.05% of TCV.[23] Therefore, the Exchange believes the proposed Remove Volume Tier is consistent with Section 6(b)(4)[24] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, routing through Bats Trading is voluntary and Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provide the rebate from that destination. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange does not believe that the proposed new tiers and standard removal rates would burden competition, but instead, enhances competition, as they are intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed tiers and standard rates would burden intramarket competition as they would apply to all Members uniformly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and paragraph (f) of Rule 19b–4 thereunder.[26] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsBYX–2016–12 on the subject line.

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[19] *See* the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[20] *See* Exchange Rule 1.5(e).

[21] 15 U.S.C. 78f(b)(4).

[22] *See* the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.*

[23] *Id.*

[24] 15 U.S.C. 78f(b)(4).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR BatsBYX–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsBYX–2016–12, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15172 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78130; File No. SR–FINRA–2016–019]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt NASD Rule 2830 as FINRA Rule 2341 (Investment Company Securities) in the Consolidated FINRA Rulebook

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt NASD Rule 2830 (Investment Company Securities) as FINRA Rule 2341 (Investment Company Securities) in the consolidated FINRA rulebook without any substantive changes. FINRA also proposes to update cross-references within other FINRA rules accordingly.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org*, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[4] FINRA is proposing to transfer NASD Rule 2830 (Investment Company Securities) into the Consolidated FINRA Rulebook as FINRA Rule 2341 (Investment Company Securities) without any substantive changes. NASD Rule 2830 regulates members' activities in connection with the sale and distribution of securities of companies registered under the Investment Company Act of 1940 ("investment company securities").[5] In connection with the distribution and sale of investment company securities, NASD Rule 2830 limits the sales charges members may receive, prohibits directed brokerages arrangements, limits the payment and receipt of cash and non-cash compensation, sets conditions on discounts to dealers, and addresses other issues such as members' purchases and sales of investment company securities as principal.

Proposed FINRA Rule 2341 closely tracks the language of NASD Rule 2830 and makes only non-substantive, technical changes to the text of the NASD rule by, for instance, replacing the reference to a legacy NASD rule with the applicable FINRA rule and making other non-substantive, technical conforming changes.[6]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of: (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from New York Stock Exchange LLC ("NYSE") ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] As with NASD Rule 2830, FINRA Rule 2341 would not regulate members' activities in connection with variable insurance contracts, which are regulated by FINRA Rule 2320 (Variable Contracts of an Insurance Company).

[6] FINRA previously solicited comment on a proposal to move NASD Rule 2830 to the Consolidated FINRA Rulebook with substantive changes. *See Regulatory Notice* 09–34 (June 2009); *see also* Securities Exchange Act Release No. 64386 May 3, 2011), 76 FR 26779 (May 9, 2011) (Notice of Filing File No. SR–FINRA–2011–018) (withdrawn on August 1, 2011). Given that FINRA would like to proceed with the rulebook

In addition, the proposed rule change makes technical changes to paragraph (b)(10) of NASD Rule 2830. Paragraph (b)(10) of NASD Rule 2830 incorporates by reference several definitions under the Investment Company Act, including "open-end management investment company." However, the Investment Company Act does not define the term "open-end management investment company," but defines "management company," and divides this term into two sub-classifications, "open-end company" and "closed-end company." [7] Accordingly, paragraph (b)(10) of proposed FINRA Rule 2341 would incorporate the definitions of "open-end company" and "closed-end company" from the Investment Company Act, rather than "open-end management investment company." The proposed rule change would then replace references to the terms "open-end management investment company," "open-end investment company," and "open-end management company" in NASD Rule 2830(c), (d), (g), (h), (i) and (j) with references to "open-end company." Similarly, the proposed rule change would replace references to the term "closed-end investment company" in NASD Rule 2830(d) and (j) with a reference to "closed-end company." These proposed changes would correct these references in the NASD rule for the purposes of adopting it as a FINRA rule, without changing the substantive meaning. FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be 30 days after the date of the filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change, which does not substantively change the rule, is consistent with the Act because it is being undertaken pursuant to the rulebook consolidation process, which is designed to provide additional clarity and regulatory efficiency to FINRA members by consolidating the applicable NASD, Incorporated NYSE, and FINRA rules into one rule set.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change will not substantively change either the text or application of the rule. FINRA would like to proceed with the rulebook consolidation process expeditiously, which is believed will provide additional clarity and regulatory efficiency to members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2016–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–019 and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15178 Filed 6–27–16; 8:45 am]

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consolidation process expeditiously to provide greater clarity and regulatory efficiency to FINRA members, FINRA is proposing to move NASD Rule 2830 to the Consolidated FINRA Rulebook without substantive changes at this time, but FINRA may consider proposing substantive changes to the rule as part of future rulemaking.

[7] *See* Sections 4(3) and 5(a) of the Investment Company Act.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78144; File No. SR–ICC–2016–007]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Revise the ICC End-of-Day Price Discovery Policies and Procedures

June 23, 2016.

On April 22, 2016, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to ICC's End-of-Day Price Discovery Policies and Procedures (the "EOD Policy") (File No. SR–ICC–2016–007). The proposed rule change was published for comment in the **Federal Register** on May 11, 2016.[3] To date, the Commission has not received comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day from the publication of notice of filing of this proposed rule change is June 25, 2016.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. ICC's proposed rule change would modify the EOD Policy to apply firm trade notional limits to groups of affiliated clearing members, rather than individual clearing members. The Commission finds it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider ICC's proposed rule change.

Accordingly, the Commission, pursuant to section 19(b)(2)[5] of the Act, designates August 9, 2016 as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–ICC–2016–007).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15323 Filed 6–27–16; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–77771 (May 5, 2016), 81 FR 29309 (May 11, 2016) (SR–ICC–2016–007).

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78132; File No. SR–CBOE–2016–046]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Expand the Nonstandard Expirations Pilot Program

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 14, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rules to expand the Nonstandard Expirations Pilot Program. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 24.4. Position Limits for Broad-Based Index Options

(a) No change.

(b) *Nonstandard Expirations* [End of Week Expirations, End of Month Expirations, and Wednesday Expirations] (as provided for in Rule 24.9(e), QIXs, Q–CAPS, Packaged Vertical Spreads and Packaged Butterfly Spreads on a broad-based index shall be aggregated with option contracts on the same broad-based index and shall be subject to the overall position limit.

* * * * *

Rule 24.9. Terms of Index Option Contracts

(a)–(d) No change.

(e) Nonstandard Expirations Pilot Program

(1) *Weekly Expirations.* [End of Week ("EOW") Expirations.] The Exchange may open for trading *Weekly Expirations* [EOWs] on any broad-based index eligible for standard options trading to expire on any *Monday, Wednesday, or* Friday *(other than the third Friday-of-the-month or days that coincide with an EOM expiration).* [of the month, other than the third Friday-of-the-month. EOWs] *Weekly Expirations* shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that [EOWs] *Weekly Expirations* shall be P.M.-settled.

The maximum number[s] of expirations that may be listed for [EOWs] *each Weekly Expiration (i.e., a Monday expiration, Wednesday expiration, or Friday expiration, as applicable) in a given class* is the same as the maximum number[s] of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index. Other than expirations that are third Friday-of-the-month or that coincide with an EOM expiration, *Weekly Expirations* [EOW expirations] shall be for consecutive *Monday, Wednesday, or* Friday expirations *as applicable. Weekly Expirations* [EOWs] that are first listed in a given class may expire up to four weeks from the actual listing date. If the last trading day of a month is a *Monday, Wednesday, or* Friday and the Exchange lists EOMs and *Weekly Expirations as applicable* [EOWs] in a given class, the Exchange will list an EOM instead of *a Weekly Expiration* [an EOW] in the given class. Other expirations in the same class are not counted as part of the maximum numbers of *Weekly Expirations* [EOW] expirations for a broad-based index class. *If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly*

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Expirations will expire on the previous business day.

(2) End of Month ("EOM") Expirations. The Exchange may open for trading EOMs on any broad-based index eligible for standard options trading to expire on last trading day of the month. EOMs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that EOMs shall be P.M.-settled.

The maximum number[s] of expirations that may be listed for EOMs *in a given class* is the same as the maximum number[s] of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index. EOM expirations shall be for consecutive end of month expirations. EOMs that are first listed in a given class may expire up to four weeks from the actual listing date. Other expirations in the same class are not counted as part of the maximum numbers of EOM expirations for a broad-based index class.

(3) [Wednesday ("WED") Expirations. The Exchange may open for trading WEDs on any broad-based index eligible for standard options trading to expire on any Wednesday of the month, other than a Wednesday that is EOM. WEDs shall be subject to all provisions of this Rule and treated the same as options on the same underlying index that expire on the third Friday of the expiration month; provided, however, that WEDs shall be P.M.-settled.

The maximum numbers of expirations that may be listed for WEDs is the same as the maximum numbers of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index. Other than expirations that coincide with an EOM expiration, WED expirations shall be for consecutive Wednesday expirations. WEDs that are first listed in a given class may expire up to four weeks from the actual listing date. If the last trading day of a month is a Wednesday and the Exchange lists EOMs and WEDs in a given class, the Exchange will list an EOM instead of a WED in the given class. Other expirations in the same class are not counted as part of the maximum numbers of WED expirations for a broad-based index class.]

[(4)] Duration of Nonstandard Expirations Pilot Program. The Nonstandard Expirations Pilot Program shall be through May 3, 2017.

[(5)] *(4) Weekly Expirations and EOM* [EOW/EOM/WED] Trading Hours on the Last Trading Day. On the last trading day, transactions in expiring *Weekly Expirations and EOMs* [EOWs, EOMs, and WEDs] may be effected on the Exchange between the hours of 8:30 a.m. (Chicago time) and 3:00 p.m. (Chicago time).

* * * * *

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 14, 2010, the Commission approved a CBOE proposal to establish a pilot program under which the Exchange is permitted to list P.M.-settled options on broad-based indexes to expire on (a) any Friday of the month, other than the third Friday-of-the-month ("EOWs"), and (b) the last trading day of the month ("EOM").[3] On January 14, 2016, the Commission approved a CBOE proposal to expand the pilot program to list P.M.-settled options on broad-based indexes that expire on any Wednesday of the month ("WEDs").[4]

Under the terms of the Nonstandard Expirations Pilot Program (the "Pilot"), EOWs, EOMs, and WEDs are permitted on any broad-based index that is eligible for regular options trading. EOWs, EOMs, and WEDs are cash-settled expirations with European-style exercise, and are subject to the same rules that govern the trading of standard index options.

The purpose of this filing is to expand the Pilot to permit P.M.-settled options on broad-based indexes to expire on any Monday of the month, other than Mondays that coincide with an EOM. To expand the Pilot as described, the Exchange is proposing to amend Rule 24.9(e)(1) to expressly provide the Exchange with the ability to list P.M.-settled options on any broad-based index eligible for standard options trading to expire on any Monday, Wednesday, or Friday (other than the third Friday-of-the-month or days that coincide with an EOM expiration). The Exchange is also proposing to remove references to Wednesday Expirations in subparagraph (e)(3) because, as proposed, subparagraph (e)(1) would incorporate WEDs.[5] Additionally, the Exchange is proposing to replace the term "EOWs" with the term "Weekly Expirations" as proposed Rule 24.9(e)(1) will include Monday and Wednesday expirations in addition to Friday expirations.

If the Exchange were to propose an extension of the Pilot or should the Exchange propose to make the Pilot permanent, then the Exchange would submit a filing proposing such amendments to the Pilot. Furthermore, any positions established under the Pilot would not be impacted by the expiration of the Pilot. For example, if the Exchange lists Weekly Expirations that expires after the Pilot expires (and is not extended) then those positions would continue to exist. However, any further trading in those series would be restricted to transactions where at least one side of the trade is a closing transaction.

Weekly Expirations that expire on Monday will be subject to the same rules that currently govern the trading of traditional index options, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for Monday expirations will be similar to the current WEDs and EOWs.

The maximum number of expirations for Weekly Expirations in a given class[6] that expire on Monday (or Wednesday and Friday as applicable) will be the same as the maximum numbers of expirations permitted in Rule 24.9(a)(2) for standard options on the same broad-based index, which is also the standard for the current WEDs and EOWs. Therefore, the maximum number of expirations permitted for all Weekly Expirations on a given class would be determined based on the specific broad-based index option class. For example, if the broad-based index option class is used to calculate a volatility index, the maximum number of Monday expirations (or Wednesday and Friday expirations as applicable) permitted in that class would be 12 expirations (as is permitted in Rule 24.9(a)(2)).

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[3] *See* Securities Exchange Act Release No. 62911 (September 4, 2010), 75 FR 57539 (September 21, 2010) (order approving SR–CBOE–2009–075).

[4] *See* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (order approving SR–CBOE–2015–106).

[5] The Exchange notes that the only substantive change in this proposal is the expansion of the Pilot to Monday expirations.

[6] The amendments to Rule 24.9(e)(2), including the addition of "in a given class" to the rule text, are non-substantive changes.

For Weekly Expirations, CBOE proposes that other than expirations that coincide with an EOM expiration (or a third Friday-of-the-month expiration in the case of Friday expiring Weekly Expirations), the Weekly Expirations shall be for consecutive expirations. For example, if the Exchange determines to list a Weekly Expiration on an option to expire on Mondays, the expirations shall generally be for consecutive Mondays. However, as is the case of the current EOWs and WEDs, the Exchange is proposing that all Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.[7] It is generally the Exchange's practice to list new expirations in a class in a manner that allows market participants to trade a particular product for longer than a week. The Weekly Expirations are not designed to have a life cycle—from listing to expiration—of one week; instead, they are simply designed to expire weekly. Thus, consistent with the Exchange's listing practices as well as the rules currently applicable to EOWs and WEDs, this rule change will allow the Exchange to launch, for example, a Monday expiring option that does not expire on the Monday immediately following the actual listing date. For example, upon approval of this rule change, if the actual listing date of the first Monday expiring option in a class is Friday, June 3rd, the expiration date of the first Monday expiring option need not be Monday, June 6th; rather, the first expiration could be June 13th or a Monday thereafter. This is the current standard for EOWs, EOMs, and WEDs.

CBOE also proposes to follow the listing hierarchy currently applicable to EOWs and EOMs. Thus, with regards to all Weekly Expirations, if the last trading day of a month falls on a day of the week on which the exchange lists both an EOM and a Weekly Expiration, the Exchange would list an EOM and not a Weekly Expiration. In other words, if the last trading day of a month is a Monday and the Exchange does not list EOMs in class ABC but does list a Monday expiring option in ABC, then the Exchange may list a Monday expiring option for the last trading day of the month in class ABC.

Additionally, in recognition of Monday expirations giving market participants the ability to hedge over the weekend risk, the Exchange proposes that if the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. The Exchange is also taking the opportunity to set forth in the rules that if the Exchange is not open for business on a respective Wednesday or Friday, the normally Wednesday or Friday expiring Weekly Expirations will expire on the previous business day. These aspects ensure that market participants have consistent Weekly Expirations and don't have a gap in expirations due to an Exchange holiday for example.

Finally, CBOE proposes to add that other expirations in the same class would not be counted as part of the maximum numbers of Weekly Expirations for a broad-based index class. CBOE states that this is the standard that currently applies to EOW, EOM, and WED options.[8]

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle any additional traffic associated with the listing of the maximum number of Monday expiring Weekly Expirations permitted under the Pilot.

Position Limits

Since Monday expirations will be a new type of series and not a new class, the Exchange proposes that all Monday expirations (or Wednesday or Friday Expirations) on the same broad-based index (*e.g.*, of the same class) shall be aggregated together with all other standard expirations for position limits (if any) and any applicable reporting and other requirements.[9] The Exchange is proposing to amend Rule 24.4(b) to apply the aggregation requirement to all Nonstandard Expirations, which includes Weekly Expirations and EOMs. This proposed aggregation is consistent with the aggregation requirements applicable to the current EOWs, WEDs, and EOMs.[10]

Annual Pilot Program Report

As part of the Pilot, the Exchange currently submits a Pilot report to the Securities and Exchange Commission ("Commission") at least two months prior to the expiration date of the Pilot (the "annual report"). The annual report contains an analysis of volume, open interest and trading patterns. In addition, for series that exceed certain minimum open interest parameters, the annual report provides analysis of index price volatility and, if needed, share trading activity. The annual report will be expanded to provide the same data and analysis related to Monday expiring options that is currently provided for EOW, EOM, and WED expirations. The Pilot is currently set to expire on May 3, 2017. All annual reports will continue to be provided to the Commission on a confidential basis.

Analysis of Volume and Open Interest

For all Weekly Expirations and EOM series, the annual report will contain the following volume and open interest data for each broad-based index overlying Weekly Expiration and EOM options:

(1) Monthly volume aggregated for all Weekly Expiration and EOM series,

(2) Volume in Weekly Expiration and EOM series aggregated by expiration date,

(3) Month-end open interest aggregated for all Weekly Expiration and EOM series,

(4) Month-end open interest for EOM series aggregated by expiration date and open interest for Weekly Expiration series aggregated by expiration date,

(5) Ratio of monthly aggregate volume in Weekly Expiration and EOM series to total monthly class volume, and

(6) Ratio of month-end open interest in EOM series to total month-end class open interest and ratio of open interest in each Weekly Expiration series to total class open interest.

Upon request by the SEC, CBOE will provide a data file containing: (1) Weekly Expiration and EOM option volume data aggregated by series, and (2) Weekly Expiration open interest for each expiring series and EOM month-end open interest for expiring series.

Monthly Analysis of Weekly Expiration and EOM Trading Patterns

In the annual report, CBOE also proposes to identify Weekly Expiration and EOM trading patterns by undertaking a time series analysis of open interest in Weekly Expiration and

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[7] The purpose of these provisions is to prevent gaps in expirations. For example, the provision prevents the Exchange from listing a Monday expiring option to expire on Monday June 6th, then not listing a Monday expiring option to expire on June 13th, and then listing a Monday expiring option to expire on June 20th. The provision is not meant to prevent the Exchange from launching a new product and having the initial expiration dates be weeks from the initial launch.

[8] *See* Rule 24.9(e)(1)–(3).

[9] *See e.g.*, Rule 4.13, *Reports Related to Position Limits* and Interpretation and Policy .03 to Rule 24.4 which sets forth the reporting requirements for certain broad-based indexes that do not have position limits.

[10] *See e.g.*, Rule 24.4(b).

EOM series aggregated by expiration date compared to open interest in near-term standard Expiration Friday A.M.-settled series in order to determine whether users are shifting positions from standard series to Weekly Expiration and EOM series. Declining open interest in standard series accompanied by rising open interest in Weekly Expiration and EOM series would suggest that users are shifting positions.

Provisional Analysis of Index Price Volatility and Share Trading Activity

For each Weekly Expiration and EOM expiration that has open interest that exceeds certain minimum thresholds, the annual report will contain the following analysis related to index price changes and, if needed, underlying share trading volume at the close on expiration dates:

(1) A comparison of index price changes at the close of trading on a given expiration date with comparable price changes from a control sample. The data will include a calculation of percentage price changes for various time intervals and compare that information to the respective control sample. Raw percentage price change data as well as percentage price change data normalized for prevailing market volatility, as measured by the CBOE Volatility Index ("VIX"), will be provided; and

(2) if needed, a calculation of share volume for a sample set of the component securities representing an upper limit on share trading that could be attributable to expiring in-the-money Weekly Expiration and EOM expirations. The data, if needed, will include a comparison of the calculated share volume for securities in the sample set to the average daily trading volumes of those securities over a sample period.

The minimum open interest parameters, control sample, time intervals, method for selecting the component securities, and sample periods will be determined by the Exchange and the Commission.

Discussion

In support of this proposal, the Exchange states that it trades other types of series and FLEX Options[11] that expire on different days than regular options and in some cases have P.M.-settlement. For example, since 1993 the Exchange has traded Quarterly Index Expirations ("QIXs") that are cash-settled options on certain broad-based indexes which expire on the first business day of the month following the end of a calendar quarter and are P.M.-settled.[12] The Exchange also trades Quarterly Option Series ("QOS") that overlie exchange traded funds ("ETFs") or indexes which expire at the close of business on the last business day of a calendar quarter and are P.M.-settled.[13] Additionally, as described above, this Pilot currently allows the Exchange to trade EOW, EOM, and WED options that are P.M.-settled. The Exchange has experience with these special dated options and has not observed any market disruptions resulting from the P.M.-settlement feature of these options. The Exchange does not believe that any market disruptions will be encountered with the introduction of P.M.-settlement options that expire on Monday.

The Exchange trades P.M.-settled EOW and WED expirations, which provide market participants a tool to hedge special events and to reduce the premium cost of buying protection. The Exchange seeks the authority to introduce P.M.-settled options that expire on Monday to, among other things, expand hedging tools available to market participants and to continue the reduction of premium cost of buying protection for positions held over the weekend. In general, an option that expires on Monday will have less time value in the premium than an option expiring on the following Wednesday or further out; thus, the addition of Monday expirations is likely to reduce the cost of buying protection for positions held over the weekend. The Exchange believes options that expire on Monday (similar to EOW and WED expirations) would allow market participants to purchase an option based on their needed timing and allow them to tailor their investment or hedging needs more effectively. Upon approval of this proposal, the Exchange first plans to expand the list of available expirations to Monday expiring SPX options. With Monday expiring SPX options, the Exchange believes VIX options and futures traders will be able to use the Monday expiring SPX option to more effectively manage the pricing complexity and risk of VIX options and futures positions, as well as to more effectively hedge risk associated with holding a position over the weekend. In addition, because P.M.-settlement permits trading throughout the day on the day the contract expires, the Exchange believes this feature will permit market participants to more effectively manage over the weekend risk and trade out of their positions up until the time the contract settles.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[14] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[15] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the EOW/EOM/WED Pilot has been successful to date and that Monday expirations simply expand the ability of investors to hedge risks against market movements stemming from economic releases or market events that occur throughout the month in the same way that EOWs, EOMs, and WEDs have expanded the landscape of hedging. Similarly, the Exchange believes Monday expirations should create greater trading and hedging opportunities and flexibility, and provide customers with the ability to more closely tailor their investment objectives. Lastly, the proposed amendments to Rule 24.9(e)(2) are conforming changes and do not present any new or novel issues.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange does not believe the proposal will impose any burden on intramarket competition as all market participants will be treated in the same manner as existing EOWs, EOMs, and WEDs. Additionally, the Exchange does not believe the proposal will impose any burden on intermarket competition as market participants on other exchanges are welcome to become Trading Permit Holders and trade at CBOE if they determine that this proposed rule change has made CBOE more attractive or favorable. Finally, although the majority of the Exchange's broad-based index options are exclusively-listed at CBOE, all options exchanges are free to compete by listing and trading their own broad-based index options that expire on Mondays.

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[11] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (order approving rule change to establish a pilot program to modify FLEX option exercise settlement values and minimum value sizes).

[12] *See* Rule 24.9(c).

[13] *See* Rules 5.5(e) and 24.9(a)(2)(B).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2016–046 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–046 and should be submitted on or July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15180 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Breitling Energy Corporation; Order of Suspension of Trading

June 24, 2016.

It appears to the Securities and Exchange Commission ("SEC") that there is a lack of current and accurate information concerning the securities of Breitling Energy Corporation ("BECC") (CIK No. 0001229089) because of questions regarding the accuracy of assertions by BECC, a Nevada corporation whose principal place of business is listed as Dallas, and by others, in public reports filed with the SEC and press releases concerning, among other things: (1) The company's assets; (2) the company's business transactions; and (3) the company's current financial condition. BECC's common stock is quoted on OTC Link operated by OTC Markets Group, Inc. under the ticker symbol BECC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, on June 24, 2016 through 11:59 p.m. EDT, on July 8, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–15377 Filed 6–24–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78126; File No. SR–CHX–2016–10]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Institutional Broker Fee Cap and Credit

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on June 16, 2016, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend its Schedule of Fees and Assessments (the "Fee Schedule") to modify certain fees and credits applicable to CHX Institutional Brokers. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

The Exchange proposes to amend the Fee Schedule to modify certain fees and credits applicable to CHX Institutional Brokers ("Institutional Brokers").[3] Specifically, the Exchange proposes to amend Sections E.3(a) and E.7 to decrease the respective fee caps[4] from $100 each to $75 each and to amend Section F.2 to decrease the Transaction Fee Credit and Clearing Submission Fee Credit (collectively "Institutional Broker credits") from 10% each to 5% each.[5]

Sections E.3(a) and E.7

Current Section E.3(a) assesses a fee of $0.0030 per share, capped at $100 per Clearing Side,[6] for an execution within the Matching System in a security priced at $1.00 per share or more that results from an agency order submitted by an Institutional Broker. Current Section E.7 assesses a similar fee of $0.0030 per share, capped at $100 per Clearing Side, for an away execution in a security priced at $1.00 per share or more that is cleared through the Exchange's clearing systems by an Institutional Broker.[7]

The Exchange now proposes to decrease the Sections E.3(a) and E.7 caps from $100 each to $75 each. The Exchange believes that the [sic] reducing Sections E.3(a) and E.7 caps would further incentivize market participants to utilize Institutional Brokers to submit orders to the Matching System.

Section F.2

Current Section F.2 provides for Institutional Broker credits and generally states that the total monthly fees owed by an Institutional Broker to the Exchange will be reduced (and Institutional Brokers will be paid for any unused credits) by the application of a Transaction Fee Credit and a Clearing Submission Fee Credit. Specifically, a Clearing Broker[8] receives a "Transaction Fee Credit" equal to 10% of the transaction fees received by the Exchange for agency trades executed through the Institutional Broker (*i.e.*, Section E.3(a) fees) for the portion(s) of the transaction handled by the Clearing Broker. Similarly, a Clearing Broker receives a "Clearing Submission Fee Credit" equal to 10% of the Clearing Submission Fees received by the Exchange pursuant to Section E.7 of the Fee Schedule for the portion(s) of the transaction handled by the Clearing Broker. Also, only Institutional Brokers which are members of the Financial Industry Regulatory Authority, Inc. are eligible for the Clearing Submission Fee Credit.

The Exchange now proposes to decrease both Institutional Broker credits from 10% each to 5% each so as to help offset lost revenue that may result from the proposed fee cap decreases. The Exchange also proposes to eliminate the phrase "per side" under the first sentence of the current definition of "Clearing Submission Fee Credit" as the definition already provides that the Clearing Submission Fee Credit is paid to a Clearing Broker for the portion of the transaction handled by the Clearing Broker. The Exchange believes that the current reference to "per side" is duplicative and non-substantive.

Operative Date

The proposed rule change is effective upon filing, but will be operative on July 1, 2016.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. Specifically, Sections E.3(a) and E.7 fees and respective fee caps will continue to be equitably allocated among all Clearing Participants. Also, the Section F.2 Institutional Broker credits will continue to be equitably allocated among all Clearing Brokers based on attributed activity in qualified executions.

Moreover, the Exchange believes that the proposed rule change is consistent with Section 6(b)(1) of the Act[11] in particular in that the proposed deletion of the words "per side" under the definition of "Clearing Submission Fee Credit" clarifies the applicability of the credit, which would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed decreases in the Sections E.3(a) and E.7 fee caps and the Institutional Broker credits reflects this competitive environment.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels set by the Exchange to be excessive. The Exchange believes that the proposed rule change will further encourage market participants to submit orders to the Exchange through Institutional Brokers, which will enhance competition in the national market system.

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[3] *See* CHX Article 1, Rule 1(n) defining "Institutional Broker"; *see also generally* CHX Article 17.

[4] The Exchange recently amended the process through which the Sections E.3(a) and E.7 fee caps are applied. *See* Exchange Act Release No. 77785 (May 9, 2016), 81 FR 29936 (May 13, 2016) (SR–CHX–2016–06).

[5] Section E.3(a) and E.7 fees are virtually identical as both apply to executions effected through Institutional Brokers that are cleared through the Exchange's clearing systems, except that Section E.3(a) applies to executions within the Matching System, whereas Section E.7 applies to qualified away executions pursuant to CHX Article 21, Rule 6(a).

[6] Section E.3(a)(3) of the Fee Schedule defines "Clearing Side," in pertinent part, as the buy or sell side of a clearing submission that is relate to a Section E.3(a) or Section E.7 execution.

[7] *See supra* note 5.

[8] Section F.2 of the Fee Schedule defines "Clearing Broker" as the Exchange-registered Institutional Broker that did not execute the trade, but acted as the broker for the ultimate Clearing Participant. The Exchange notes that the Institutional Broker that executed the trade may also be a Clearing Broker for the purposes of Section F.2 if the Institutional Broker acted as the broker for one or more of the Clearing Participants allocated positions to the trade.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(1).

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and subparagraph(f)(2) of Rule 19b–4 thereunder[13] because it establishes or changes a due, fee or other charge imposed by the Exchange.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2016–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2016–10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2016–10 and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15176 Filed 6–27–16; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78129; File No. SR–Phlx–2016–67]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Risk Monitor Mechanism

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2016, NASDAQ PHLX LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposal to amend Rule 1095, entitled "Automated Removal of Quotes."

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1095, entitled "Automated Removal of Quotes" to modify the minimum Specified Percentage (as described below) determined by a Market Maker[3] to enable a Market

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Market Makers include Specialists and Registered Options Traders or "ROTs." An ROT is defined in Exchange Rule 1014(b) as a is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. A ROT includes Streaming Quote Traders or "SQTs" and Remote Streaming Quote Traders or "RSQTs" as well as on and off-floor ROTS. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options

Maker to enhance their risk management for an underlying security as market conditions warrant, based on their own risk tolerance level and quoting behavior. The manner in which Rule 1095 operates is not being amended in this rule change. The Exchange proposes to permit the Market Maker to set the Specified Percentage more broadly, at not less than 1% with this rule change. The Exchange also proposes to memorialize the definition of disseminated size in the rule text.

Background

Today, Rule 1095 permits Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security. A Market Maker may provide a specified time period and a specified percentage by which the Exchange's Phlx XL System ("System") will automatically remove a Market Maker's quotes in all series of an underlying security submitted through designated Phlx protocols, as specified by the Exchange, during a specified time period not to exceed 15 seconds ("Percentage-Based Specified Time Period").[4]

For each series in an option, the System determines: (i) The percentage that the number of contracts executed in that series represents relative to the Market Maker's disseminated[5] size of each side in that series ("Series Percentage"); and (ii) the sum of the Series Percentage in the option issue ("Issue Percentage"). The System tracks and calculates the net impact of positions in the same option issue during the Percentage-Based Specified Time Period. The System tracks transactions, *i.e.,* the sum of buy-side put percentages, the sum of sell-side put percentages, the sum of buy-side call percentages, and the sum of sell-side call percentages, and then calculates the absolute value of the difference between the buy-side puts and the sell-side puts plus the absolute value of the difference between the buy-side calls and the sell-side calls. If the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by the Market Maker, not less than 100% ("Specified Percentage"), the System automatically removes a Market Maker's quotes in all series of an underlying security submitted through designated Phlx protocols, as specified by the Exchange, during the Percentage-Based Specified Time. The Exchange counts Specialized Quote Feed ("SQF")[6] quotes only in determining the number of contracts traded and removed by the System.

The Percentage-Based Specified Time Period commences for an option every time an execution occurs in any series in such option and continues until the System removes quotes as described in current Rule 1095(iv) or (v) or the Percentage-Based Time Period expires. The Percentage-Based Specified Time Period operates on a rolling basis among all series in an option in that there may be multiple Percentage-Based Specified Time Periods occurring simultaneously and such Percentage-Based Specified Time periods may overlap.

Proposal

The Exchange proposes to lower the Specified Percentage from 100% to 1%. The proposal would provide that if the Issue Percentage, rounded to the nearest integer, equals or exceeds a percentage established by the Market Maker, not less than *1%* ("Specified Percentage"), the System automatically removes a Market Maker's quotes in all series of an underlying security submitted through designated Phlx protocols, as specified by the Exchange, during the Percentage-Based Specified Time. This proposal would allow a Market Maker to establish a Specified Percentage at any percentage level no less than 1% for an option in which the Market Maker is appointed. Today, the Specified Percentage would be set at greater than or equal to 100%. This amendment will allow Market Makers to better manage their risk and assist them to avoid trading a number of contracts that exceeds the Marker Maker's risk tolerance level across multiple series of a single underlying when such series are executed in rapid succession.

Market Makers will be able to more precisely customize their risk management within the System, taking into account such factors as present and anticipated market conditions, news in an option sudden change in volatility of an option without any limitation regarding the Specified Percentage. Market Makers will be able to adopt more precise controls based on the Market Maker's risk tolerance level.

Market Makers must utilize either the Percentage-Based[7] or Volume-Based risk controls. Market Makers must contact Market Operations to set their percentage and specified time period.

By way of example, if a Market Maker has a rapid fire percentage setting of 50% and a Specified Time Period of 15 seconds and the Order Book reflects:

MM1 has a displayed quote of 1.10 (100) × 1.20 (100) for IBM May 20, 2016 70 puts and MM1 is the only displayed size on Phlx and an order is submitted to buy 75 IBM May 20, 2016 70 Puts for 1.20

Rule 1095 would:

(1) Provide MM1 with an execution—Sld 75 @ 1.20; and

(2) Trigger the Percentage-Based Threshold and remove MM1's quotes in IBM.

Another example is with multiple executions. Presume MM1 has a rapid fire percentage setting of 80% by 5 seconds and MM1 has a displayed quote of 2.00 (100) × 2.25 (100) for IBM May 20, 2016 70 puts and he is the only displayed size on the Phlx. Also, presume an order comes in to buy 50 IBM May 20, 2016 70 puts for 2.25. The following executions would result:

MM1 receives an execution Sold 50 @2.25
MM1 quote updates to 2.00 (100) × 2.25 (50)
Within 1 second an order comes in to buy 45 IBM May 20, 2016 70 puts for 2.25
MM1 receives an execution Sold 45 @2.25
MM1 receives rapid fire for IBM

The Exchange also proposes to memorialize the definition of disseminated size, which is the original size quoted by the Market Maker, within Rule 1095.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Market Makers are obligated to submit continuous two-sided quotations in a

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to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers ("RMMs").

[4] A specified time period commences for an option when a transaction occurs in any series in such option.

[5] The disseminated size is the original size quoted by the Market Maker.

[6] SQF permits the receipt of quotes. SQF Auction Responses and market sweeps are also not included.

[7] Market Makers selecting the Percentage-Based risk control in Rule 1095(i) are required to provide a specified time period, up to 15 seconds, and a specified percentage with a number of 1% or greater, as proposed herein, to the Market Operations staff to select this risk control. If a Market Maker does not desire to utilize the Percentage-Based risk control the Market Maker must utilize the Volume-Based risk control. Market Makers must set-up their risk control settings initially, when they become a Phlx Market Maker, and then subsequent changes by contacting Market Operations.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

certain number of series in their appointed option classes for a certain percentage of each trading session,[10] rendering them vulnerable to risk from unusual market condition, volatility in specific options, and other market events that may cause them to receive multiple, extremely rapid automatic executions before they can adjust their quotations and overall risk exposure in the market. Without adequate risk management tools in place on the Exchange, the incentive for Market Makers to quote aggressively, respecting both price and size could be diminished. Such a result may undermine the quality of the markets, which are enhanced by the depth and liquidity such Market Makers provide in the marketplace.

By allowing the percentage to be reduced from 100% to 1%, the Exchange provides its Market Makers the desired flexibility to take into account such factors as present and anticipated market conditions, news in an option or sudden change in volatility of an option without any limitation regarding the Specified Percentage. This should encourage Market Makers to provide additional depth and liquidity to the Exchange's markets, thereby removing impediments to and perfecting the mechanisms of a free and open market and a national market system and, in general, protecting investors and the public interest.

The proposal is consistent with the Act because the reduction of the Specified Percentage to not less than 1% provides more alternatives to Market Makers in setting their percentage without impacting their firm quote obligations. The System operates consistently with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, with respect to Market Makers, their obligation to provide continuous two-sided quotes on a daily basis is not diminished by the removal of such quotes by the Percentage-Based Threshold. Market Makers are required to provide continuous two-sided quotes on a daily basis.[11] Market Makers that utilize the Percentage-Based Threshold will not be relieved of the obligation to provide continuous two-sided quotes on a daily basis, nor will it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet the continuous quoting obligation each trading day. All quotes entered into the System are considered firm. Quotes will only be removed from the System once the Percentage-Based Threshold has been met if the quote was not otherwise executed by an incoming order.

This risk feature will continue to remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors and the public interest by allowing Market Makers to remove their quotes in the event that market conditions warrant, based on their own risk tolerance level. Market Makers provide liquidity to the market place and have obligations unlike other market participants.[12] This risk feature is important because it will enable Market Makers to manage their exposure at the Exchange. Further, permitting a broader setting would continue to allow Market Makers to have flexibility in setting their risk exposure to prevent unintended triggers of the Percentage-Based Threshold and it continues to allow Market Makers to set a Specified Time Period. Each Market Maker has different levels of sensitivity and their own system safeguards as well. The proposed setting would permit each Market Maker to select a setting that is appropriate to capture the needs of that Market Maker.

Further, it is important to note that any interest that is executable against a Market Maker's quotes that is received[13] by the Exchange prior to the trigger of the Percentage-Based Threshold, which is processed by the System, automatically executes at the price up to the Market Maker's size. Further, the Purge Notification Message is accepted by the System in the order of receipt in the queue and is processed in that order so that interest that is already accepted into the System is processed prior to the message.

The Exchange notes that Miami International Securities Exchange, LLC ("MIAX") implemented a rule which changed its Allowable Engagement Percentage from 100% to any percentage established by the Market Maker.[14] The Phlx rule is similar to MIAX in that a member is required to have a setting, although MIAX has a default setting in place in the instance that no percentage is provided. Market Makers that select the Percentage-Based risk tool must provide the Exchange with a specified time period and a percentage greater than or equal to 1%.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Percentage-Based Threshold is meant to protect Market Makers from inadvertent exposure to excessive risk. This proposal will foster competition by providing Exchange Market Makers with the ability to enhance and customize their percentage in order to compete for executions and order flow. Specifically, the proposal does not impose a burden on intra-market or inter-market competition, rather, it provides Market Makers with the opportunity to avail themselves of similar risk tools which are currently available on other exchanges.[15] Market Makers quote across many series in an option creating the possibility of "rapid fire" executions that can create large, unintended principal positions that expose Market Makers. The Percentage-Based Threshold permits Market Makers to monitor risk arising from multiple executions across multiple options series of a single underlying security.

The Exchange is proposing this rule change to continue to permit Market Makers to reduce their risk in the event the Market Maker is suffering from a system issue or due to the occurrence of unusual or unexpected market activity. Reducing such risk will enable Market Makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Reducing risk by utilizing the proposed risk protections enables Market Makers, specifically, to enter quotations with larger size, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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[10] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

[11] *Id.*

[12] *Id.*

[13] The time of receipt for an order or quote is the time such message is processed by the Exchange book.

[14] *See* Securities Exchange Act Release No. 77817 (May 12, 2016), 81 FR 31286 (May 18, 2016) (SR–MIAX–2016–10).

[15] *See* Section 8 of the 19b–4.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and subparagraph (f)(6) of Rule 19b–4 thereunder.[17] The Exchange has requested that the Commission waive the thirty-day operative delay so that the proposal may become operative immediately. The Commission believes that waiving the thirty-day operative delay is consistent with the protection of investors and the public interest. The Exchange proposes to change a setting in an existing risk protection feature to enhance market makers' ability to protect against excessive risk arising from multiple executions across multiple options series of a single underlying security. The Commission notes that another options exchange currently has a similar setting for a like risk protection feature for market makers. Therefore, the Commission hereby waives the thirty-day operative delay and designates the proposal effective upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2016–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–67, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15177 Filed 6–27–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78121; File No. SR-BatsEDGA–2016–12]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 8, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to EDGA Rules 15.1(a) and (c) ("Fee Schedule") to: (i) Add fee codes NA and NB; (ii) add new Volume Tier 3; and (iii) delete the MidPoint Discretionary Order Add Volume Tier.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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[16] 15 U.S.C. 78s(b)(3)(a)(iii).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[18] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." *See* Exchange Rule 1.5(n).

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) Add fee codes NA and NB; (ii) add new Volume Tier 3; and (iii) delete the MidPoint Discretionary Order Add Volume Tier.

Fee Codes NA and NB

The Exchange previously filed a proposed rule change with the Commission to include a Non-Displayed[6] instruction on orders routed to an away Trading Center.[7] The Exchange intends to implement this functionality on June 1, 2016.[8] Because other Trading Centers typically provide different rebates or fees with respect to non-displayed liquidity the Exchange proposes to amend its Fee Schedule to add fee codes NA and NB, which would apply to orders routed with a Non-Displayed instruction. Proposed fee code NA would be applied to orders that include a Non-Displayed instruction that are routed to and add liquidity on Bats EDGX Exchange, Inc. ("EDGX"), Bats BZX Exchange, Inc. ("BZX"), the New York Stock Exchange, Inc. ("NYSE"), NYSE Arca, Inc. ("NYSE Arca"), NYSE MKT LLC ("NYSE MKT"), or the Nasdaq Stock Market LLC ("Nasdaq").[9] Orders that yield fee code NA would not be charged a fee nor receive a rebate in both securities priced at or above $1.00 or below $1.00. Proposed fee code NB would be applied to orders that include a Non-Displayed instruction and are routed to and add liquidity on any exchange not listed in proposed fee code NA. Orders that yield fee code NB would be charged a fee of $0.0030 per share in securities priced at or above $1.00 and 0.30% of the trade's total dollar value in securities priced below $1.00.

Proposed Volume Tier 3

The Exchange determines the liquidity adding reduced fee that it will charge Members using a tiered pricing structure. Currently, the Exchange charges reduced fee of $0.0003 per share under two Volume Tiers described in footnote 4 of the Fee Schedule. To receive Volume Tier 1's reduced fee, a Member must add an ADV[10] of at least 1% of the TCV,[11] including orders with a Non-Displayed instruction that add liquidity. To receive Volume Tier 2's reduced fee, a Members must add an ADV of at least 0.25% of the TCV, including orders with a Non-Displayed instruction that add liquidity; and removes an ADV of at least 0.25% of the TCV. The Exchange now propose to add Volume Tier 3 under which a Member would be charged a reduced fee of $0.0003 per share where that Member adds an ADV of at least 0.15% of TCV, including non-displayed orders that add liquidity; and has an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%.

Deletion of MidPoint Discretionary Order Add Volume Tier

The Exchange currently offers the MidPoint Discretionary Order Add Volume Tier under which a Member is charged a reduced fee of $0.0003 per share where they add an ADV of at least 0.15% of the TCV including non-displayed orders that add liquidity; and add or remove an ADV of at least 500,000 shares yielding fee codes DM or DT.[12] The Exchange now proposes to delete the MidPoint Discretionary Order Add Volume Tier. The Exchange notes that Members that previously qualified for the MidPoint Discretionary Order Add Volume Tier may achieve the same reduced fee by satisfying what the Exchange believes to be substantially similar criteria as the proposed Volume Tier 3 discussed above, or the existing tiers under footnote 4 of the Fee Schedule.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule effective immediately.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed fee codes are equitable and non-discriminatory in they would apply uniformly to all Members. The Exchange believes the rates remains competitive with those charged by other venues and, therefore, reasonable and equitably allocated to Members.

In particular, the Exchange believes that the proposed fee codes represent an equitable allocation of reasonable dues, fees, and other charges. The proposed fees are similar to and based on the fees and rebates assessed or provided to Bats Trading when routing to away Trading Centers. For instance, like proposed fee code NA, the NYSE, NYSE Arca, and Nasdaq charge no fee nor provide a rebate for non-displayed orders that add liquidity.[16] In addition, the exchanges that would be covered by proposed fee code NB charge a fee of up to $0.0030 per share to add liquidity.[17] In addition, the proposed rate for fee code NB is equal to or greater than similar routing fees charged by other exchanges. For example, the NYSE, NYSE MKT, Nasdaq, and BZX charge a fee of $0.0030 per share and NYSE Arca charges a fee of $0.0035 per share regardless of which destination the order is routed.[18]

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[6] *See* Exchange Rule 11.6(e)(2).

[7] The Exchange notes that the Exchange also amended its rules to route orders with a Reserve Quantity (as defined in Rule 11.6(m)) as such to other Trading Centers. *See* Securities Exchange Act 77189 (February 19, 2016), 81 FR 9571 (February 25, 2016) (SR–EDGX–2016–08). Orders to be routed with a Non-Displayed instruction or a Reserve Quantity would be handled in accordance with the rules of the Trading Center to which they are routed. *Id.* This proposal does not impact orders routed with a Reserve Quantity.

[8] *See Bats Announces Support for Hidden Post-to-Away Routed Orders, available at http://cdn.batstrading.com/resources/release_notes/2016/Bats-Announces-Support-for-Hidden-Post-to-Away-Routed-Orders.pdf.*

[9] Today, all orders that are routed to post to an away market are routed for display on such market and receive the following rates: (i) Rebate of $0.0015 per share for orders routed to the NYSE; (ii) rebate of $0.0021 per share for Tapes A and C securities and a rebate of $0.0022 per share for Tape B securities for orders routed to NYSE Arca; (iii) rebate of $0.0015 per share for orders routed to NYSE MKT; (iv) rebate of $0.0015 per share for orders routed to Nasdaq; and (v) a rebate of $0.0020 per share for orders routed to EDGX or BZX. *See* the Exchange's Fee Schedule *available at http://batstrading.com/support/fee_schedule/edgx/.* These rates generally represent a pass through of the rate that Bats Trading, Inc. ("Bats Trading"), the Exchange's affiliated routing broker-dealer, is provided for adding displayed liquidity at NYSE, NYSE Arca, NYSE MKT, Nasdaq, EDGX, or BZX when it does not qualify for a volume tiered reduced fee or enhanced rebate.

[10] As defined in the Exchange's Fee Schedule.

[11] *Id.*

[12] Fee code DM is appended to MidPoint Discretionary Orders with a Non-Displayed instruction that add liquidity. *Id.* Fee code DT is appended to MidPoint Discretionary Orders with a Non-Displayed instruction that remove liquidity. *Id.*

[13] The Exchange initially filed the proposed fee change on May 31, 2016 (SR–BatsEDGA–2016–11). On June 8, 2016, the Exchange withdrew SR–BatsEDGA–2016–11 and submitted this filing.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] *See* the NYSE fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf* (dated May 23, 2016); the NYSE Arca fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf* (dated May 23, 2016); *and* the Nasdaq fee schedule *available at http://www.nasdaqtrader.com/*

The Exchange notes that routing through Bats Trading is voluntary. The Exchange is providing a service to allow Members to post orders with a Non-Displayed instruction to these destinations and that those Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provided the rebate from that destination. Therefore, the Exchange believes the rates for proposed fee codes NA and NB are equitable and reasonable because they are related to the rates provided by the away exchange and reasonably account for the routing service provided for by the Exchange. Lastly, the Exchange believes that the proposed amendments are non-discriminatory because it applies uniformly to all Members and that the proposed rates are directly related to rates provided by the destinations to which the orders may be routed.

In addition, volume-based rebates such as that proposed herein have been widely adopted by equities and options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) The value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the addition of the Volume Tier 3 is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange further believes that the proposed tier represents an equitable allocation of reasonable dues, fees, and other charges because the thresholds necessary to achieve the tier encourages Members to add liquidity to the EDGA Book[19] each month. The Exchange also notes that the criteria and reduced rate under Volume Tier 3 is equitable and reasonable as compared to other tiers offered by the Exchange. For example, under the Volume Tier 1, Members may receive a reduced fee of $0.0003 per share where they add an ADV of at least 1% of the TCV, including orders with a Non-Displayed instruction that add liquidity. To receive the same reduced fee under Volume Tier 2, a Member must add an ADV of at least 0.25% of the TCV, including orders with a Non-Displayed instruction that add liquidity; and removes an ADV of at least 0.25% of the TCV. Under the proposed Volume Tier 3, while the Member must satisfy a lower ADV as a percentage of TCV threshold, the Member must have an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%, which the Exchange believes is a reasonable standard by which to award the reduced rate in relation to current Volume Tiers 1 and 2. Therefore, the Exchange believes the proposed Volume Tier 3 is consistent with Section 6(b)(4)[20] of the Act as the more stringent criteria correlates with the tier's reduced rate.

Lastly, the Exchange believe removing the MidPoint Discretionary Order Add Volume Tier is also equitable, reasonable and not unfairly discriminatory because Members that previously qualified for the MidPoint Discretionary Order Add Volume Tier may achieve the same reduced fee my satisfying what the Exchange believes to be substantially similar criteria as the proposed Volume Tier 3 discussed above, or the existing tiers under footnote 4 of the Fee Schedule.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe its proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. For example, routing through Bats Trading is voluntary and Members seeking to post such orders to away destinations may connect to those destinations directly and be charged the fee or provide the rebate from that destination. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

The Exchange does not believe that the proposed new tier would burden competition, but instead, enhances competition, as it is intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed change is generally intended to enhance the reduced fees for liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed tier would burden intramarket competition as it would apply to all Members uniformly.

Lastly, the Exchange does not believe removing the MidPoint Discretionary Order Add Volume Tier would burden competition because Members that previously qualified for the MidPoint Discretionary Order Add Volume Tier may achieve the same reduced fee my satisfying what the Exchange believes to be substantially similar criteria as the proposed Volume Tier 3 discussed above, or the existing tiers under footnote 4 of the Fee Schedule.

Trader.aspx?id=PriceListTrading2. The Exchange notes that NYSE MKT, EDGX, and BZX provide a rebate of $0.0016, $0.0015, and $0.0017 per share respectively for non-displayed orders that add liquidity. *See* the NYSE MKT fee schedule *available at https://www.nyse.com/publicdocs/nyse/markets/nyse-mkt/NYSE_MKT_Equities_Price_List.pdf* (dated May 23, 2016); the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/; and* the BZX fee schedule *available at http://batstrading.com/support/fee_schedule/bzx/*.

[17] *See* the Bats BYX Exchange Inc. fee schedule *available at http://batstrading.com/support/fee_schedule/byx/;* and the Nasdaq BX, Inc. fee schedule *available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing*. The Exchange notes that it currently does not provide for routing orders to post on the Chicago Stock Exchange, Inc. or the National Stock Exchange, Inc.

[18] *See supra* note 16. Nasdaq charges a fee of $0.0035 per share for routed orders that are directed to another market. *See* the Nasdaq fee schedule *at id*.

[19] *See* Exchange Rule 1.5(d).

[20] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and paragraph (f) of Rule 19b–4 thereunder.[22] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BatsEDGA–2016–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BatsEDGA–2016–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BatsEDGA–2016–12, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15171 Filed 6–27–16; 8:45 am]

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[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78123; File No. SR–NASDAQ–2016–084]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Elimination of SPY Position Limits

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, The NASDAQ Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to extend for another twelve (12) month time period the pilot program to eliminate position limits for options on the SPDR® S&P 500® exchange-traded fund ("SPY ETF" or "SPY"),[3] which list and trade under the symbol SPY ("SPY Pilot Program").

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Supplementary Material at the end of Chapter III, Section 7 (Position Limits) to extend the current pilot which expires on July 12, 2016 for an additional twelve (12) month time period to July 12, 2017 ("Extended Pilot"). This filing does not propose any substantive changes to the SPY Pilot Program. In proposing to extend the SPY Pilot Program, the Exchange reaffirms its consideration of several factors that supported the original proposal of the SPY Pilot Program, including (1) the availability of economically equivalent products and their respective position limits; (2) the liquidity of the option and the underlying security; (3) the market capitalization of the underlying security and the related index; (4) the reporting of large positions and requirements surrounding margin; and (5) the potential for market on close volatility.

With this proposal, the Exchange submits the SPY report to the Commission, which report reflects, during the time period from May 2015 through May 2016, the trading of standardized SPY options with no position limits consistent with option exchange provisions.[4] The report was prepared in the manner specified in the Exchange's prior rule filing extending the SPY Pilot Program.[5] The Exchange notes that it is unaware of any problems created by the SPY Pilot Program and does not foresee any as a result of the proposed extension. The proposed extension will allow the Exchange and the Commission additional time to further evaluate the pilot program and its effect on the market.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] "SPDR®," "Standard & Poor's®," "S&P®," "S&P 500®," and "Standard & Poor's 500" are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

As with the original proposal to establish the SPY Pilot Program, the Exchange represents that a SPY Pilot Report will be submitted at least thirty (30) days before the end of the Extended Pilot and would analyze that period. The Pilot Report will detail the size and different types of strategies employed with respect to positions established as a result of the elimination of position limits in SPY. In addition, the report will note whether any problems resulted due to the no limit approach and any other information that may be useful in evaluating the effectiveness of the Extended Pilot. The Pilot Report will compare the impact of the SPY Pilot Program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY shares, particularly at expiration during the Extended Pilot. In preparing the report the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange will make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program. Conditional on the findings in the SPY Pilot Report, the Exchange will file with the Commission a proposal to extend the pilot program, adopt the pilot program on a permanent basis or terminate the pilot. If the SPY Pilot Program is not extended or adopted on a permanent basis by the expiration of the Extended Pilot, the position limits for SPY options would revert to limits in effect prior to the commencement of the SPY Pilot Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial to market participants, including market makers, institutional investors and retail investors, by permitting them to establish greater positions when pursuing their investment goals and needs. The Exchange also believes that economically equivalent products should be treated in an equivalent manner so as to avoid regulatory arbitrage, especially with respect to position limits. Treating SPY and SPX options differently by virtue of imposing different position limits is inconsistent with the notion of promoting just and equitable principles of trade and removing impediments to perfect the mechanisms of a free and open market. At the same time, the Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard, the Exchange notes that the rule change is being proposed as a competitive response to similar filings that the Exchange expects to be filed by other options exchanges. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for a multiply listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–084, and should be submitted on or before July 19, 2016.

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[4] The report is attached as Exhibit 3.

[5] *See* Securities Exchange Act Release No. 75413 (July 9, 2015), 80 FR 41519 (July 15, 2015) (SR–NASDAQ–2015–072).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(a)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15173 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78120; File No. SR–MIAX–2016–17]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rules 307 and 309 To Extend the SPY Pilot Program

June 22, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, Miami International Securities Exchange LLC ("MIAX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rules 307 and 309 to extend the pilot program that eliminates the position and exercise limits for physically-settled options on the SPDR® S&P 500® ETF Trust ("SPY Pilot Program") and to make non-substantive technical corrections to Interpretations and Policies .01.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rules 307, Position Limits, and 309, Exercise Limits, establish position and exercise limits for aggregate positions in option contracts traded on the Exchange. Interpretations and Policies .01 to Rule 307 lists specific position limits for options on specific underlying securities, and Interpretations and Policies .01 to Rule 309 lists specific exercise limits for options on specific underlying securities. Among the listed specific underlying securities is the SPDR® S&P 500® ETF Trust ("SPY"). Currently, each of these Rules provides that there is no position limit and no exercise limit on options overlying SPY. The position and exercise limits for options overlying SPY in each of these Rules are the subject of a pilot program, which is scheduled to expire on July 12, 2016.[3]

The Exchange proposes to amend Exchange Rule 307, Interpretations and Policies .01, and Exchange Rule 309, Interpretations and Policies .01, to extend the duration of the SPY Pilot Program through July 12, 2017. There are no substantive changes being proposed to the SPY Pilot Program. The Exchange affirms its consideration of several factors that support the proposal to establish and extend the SPY Pilot Program, which include: (1) The liquidity of the option and the underlying security; (2) the market capitalization of the underlying security and the securities that make up the S&P 500 Index; (3) options reporting requirements; and (4) financial requirements imposed by MIAX and the Commission.

The Exchange notes that it is not aware of any problems created by the current SPY Pilot Program and does not foresee any problems with the proposed extension. The Exchange has formally submitted a Report for the SPY Pilot Program as part of this filing.[4] In addition, the Exchange represents that if it chooses to extend or seek permanent approval of the SPY Pilot Program, the Exchange will submit another SPY Pilot Program Report at least thirty (30) days prior to the expiration of the extended SPY Pilot Program time period which would cover the period between reports. The SPY Pilot Program Report will compare the impact of the pilot program, if any, on the volumes of SPY options and the volatility in the price of the underlying SPY contract, particularly at expiration. The SPY Pilot Program Report will also detail the size and different types of strategies employed with respect to positions established in SPY options; note whether any problems, in the underlying SPY ETF or otherwise, arose as a result of the no-limit approach; and include any other information that may be useful in evaluating the effectiveness of the SPY Pilot Program. In preparing the Pilot Report, the Exchange will utilize various data elements such as volume and open interest. In addition the Exchange would make available to Commission staff data elements relating to the effectiveness of the SPY Pilot Program.

The Exchange proposes to extend the SPY Pilot Program in order for the Exchange and the Commission to have additional time to evaluate the Pilot and its effect on the market and to determine whether to seek permanent approval. Prior to the expiration of the SPY Pilot Program and based upon the findings of the SPY Pilot Program Report, the Exchange will be able to either extend the SPY Pilot Program, adopt the SPY Pilot Program on a permanent basis, or terminate the SPY Pilot Program. If the SPY Pilot Program is not extended or adopted on a permanent basis by the expiration of the extended SPY Pilot Program, the position limits for options overlying SPY would revert to limits in effect prior to the commencement of the SPY Pilot Program.

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75448 (July 14, 2015), 80 FR 42856 (July 20, 2015) (SR–MIAX–2015–46) (extending the SPY Pilot Program to July 12, 2016).

[4] *See Exhibit 3* attached hereto.

Additionally, the Exchange proposes to make non-substantive technical changes to the chart of securities in Interpretations and Policies .01 of both Rule 307 and 309 to reflect the current names of the underlying securities identified in the chart.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that extending the SPY Pilot Program promotes just and equitable principles of trade by permitting market participants, including market makers, institutional investors and retail investors, to establish greater positions when pursuing their investment goals and needs. The Exchange believes that the elimination of position limits for SPY options would not increase market volatility or facilitate the ability to manipulate the market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any aspect of competition, whether between the Exchange and its competitors, or among market participants. Instead, the proposed rule change is designed to allow the SPY Pilot Program to continue as the Exchange believes other competing options exchanges will also extend the SPY Pilot Program for another year.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2016–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2016–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2016–17, and should be submitted on or before July 19, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15170 Filed 6–27–16; 8:45 am]

BILLING CODE 8011–01–P

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 9615]

Culturally Significant Objects Imported for Exhibition Determinations: "Los Angeles to New York, The Dwan Gallery 1959–1971" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Los Angeles to New York, The Dwan Gallery 1959–1971," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, District of Columbia, from on or about September 30, 2016, until on or about January 29, 2017; Los Angeles County Museum of Art, Los Angeles, California, from on or about March 19, 2017, until on or about September 10, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: June 22, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–15262 Filed 6–27–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program Notice; San Antonio International Airport; San Antonio, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by San Antonio International Airport under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On December 29, 2014, the FAA determined that the noise exposure maps submitted by San Antonio International Airport under part 150 were in compliance with applicable requirements. On June 2, 2015, the FAA approved the San Antonio International Airport noise compatibility program. Both of the recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the San Antonio International Airport noise compatibility program is June 2, 2015.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, John MacFarlane, ASW652–B, 10101 Hillwood Parkway, Fort Worth, Texas 76177. Telephone (817) 222–5681.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for San Antonio International Airport, effective June 2, 2015.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Fort Worth, Texas.

San Antonio International Airport submitted to the FAA on December 17, 2014 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 14, 2014 through December 17, 2014. The San Antonio International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on December 29, 2014. Notice of this determination was published in the **Federal Register** on January 22, 2015.

The San Antonio International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from December 2014 to the year 2019. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on January 12, 2015 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained two proposed actions for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective June 2, 2015.

Outright approval was granted for both of the specific program elements. San Antonio International Airport intends to continue acoustical treatment for noise-sensitive facilities, *e.g.*, residences, schools and places of worship, that are located in areas exposed to aircraft noise of DNL 65 dB and higher based on the FAA-accepted and current noise exposure map on file with the FAA and not necessarily tied specifically to the 2014 Noise Exposure Map.

These determinations are set forth in detail in a Record of Approval signed by the FAA Southwest Region Airports Division Manager on June 2, 2015. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of San Antonio International Airport. The Record of Approval also will be available on-line at ***https://www.faa.gov/airports/environmental/airport_noise/part_150/states/tx/media/roa-texas-san-antonio-20150602.pdf.***

Issued in Fort Worth, Texas, June 20, 2016.

Ignacio Flores,

Manager, Airports Division.

[FR Doc. 2016–15183 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0041]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 57 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 28, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0041 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 57 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

David J. Ahlers

Mr. Ahlers, 66, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ahlers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ahlers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

George M. Antonopoulos

Mr. Antonopoulos, 58, has had ITDM since 1988. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Antonopoulos understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Antonopoulos meets the requirements of the vision standard at

49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Massachusetts.

Louis G. Babich

Mr. Babich, 72, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Babich understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Babich meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C CDL from New Jersey.

Scott R. Bailey

Mr. Bailey, 49, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bailey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bailey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Michael J. Beaver

Mr. Beaver, 50, has had ITDM since 1989. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beaver understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beaver meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Jason C. Bradley

Mr. Bradley, 41, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bradley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bradley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Joel P. Brown

Mr. Brown, 57, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

Larry D. Brown

Mr. Brown, 57, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Louisiana.

Garret L. Carter

Mr. Carter, 30, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Carter understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carter meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

Christopher D. Chapman

Mr. Chapman, 55, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chapman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Robert J. Chapman

Mr. Chapman, 36, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chapman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chapman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Steven A. Crain

Mr. Crain, 50, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Crain understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Crain meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Louisiana.

Phillip Daquila III

Mr. Daquila, 54, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Daquila understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Daquila meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Robert N. Drake

Mr. Drake, 70, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Drake understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Drake meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class C CDL from Texas.

Kirk A. Erickson

Mr. Erickson, 57, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Erickson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Erickson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Raymond E. Fisher, Jr.

Mr. Fisher, 58, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fisher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fisher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

Richard M. Frostig

Mr. Frostig, 69, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Frostig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Frostig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Connecticut.

Lawrence M. Gates

Mr. Gates, 43, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gates understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gates meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Alva E. Gladney

Ms. Gladney, 34, has had ITDM since 2015. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Gladney understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Gladney meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in

2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Louisiana.

John J. Gonzalez

Mr. Gonzalez, 55, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gonzalez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gonzalez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

James M. Haight

Mr. Haight, 58, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Haight understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Haight meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Bradley T. Hall

Mr. Hall, 28, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

William C. Higgins

Mr. Higgins, 60, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Higgins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Higgins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from North Carolina.

David R. Hodge

Mr. Hodge, 61, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hodge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hodge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

James Holman

Mr. Holman, 56, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Kevin R. Holz

Mr. Holz, 62, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

Jaemin Hwang

Mr. Hwang, 56, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hwang understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hwang meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from New York.

Willis A. Jergenson

Mr. Jergenson, 66, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jergenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jergenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Iowa.

Steven C. Jordan, Jr.

Mr. Jordan, 46, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jordan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jordan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

Craig S. Kozlowski

Mr. Kozlowski, 59, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kozlowski understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kozlowski meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Alan D. Kozy

Mr. Kozy, 55, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kozy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kozy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Duane A. Leazott

Mr. Leazott, 50, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leazott understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leazott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Mark D. Lema

Mr. Lema, 42, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lema understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lema meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Robert A. Lewis

Mr. Lewis, 59, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lewis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lewis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

David A. Luchansky

Mr. Luchansky, 65, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Luchansky understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Luchansky meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

Jacob T. Marsee

Mr. Marsee, 24, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marsee understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marsee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Richard E. Mellors

Mr. Mellors, 68, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mellors understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mellors meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Ronald L. Mills

Mr. Mills, 31, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mills understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mills meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Colton J. Nefzger

Mr. Nefzger, 23, has had ITDM since 2002. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Nefzger understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Nefzger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Dakota.

Dorian T. Papazikos

Mr. Papazikos, 29, has had ITDM since 1997. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Papazikos understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Papazikos meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

Kurt A. Payne

Mr. Payne, 45, has had ITDM since 1981. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Payne understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Payne meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from California.

Carson A. Penny

Mr. Penny, 24, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Penny understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Penny meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Wayne F. Pohlmeier

Mr. Pohlmeier, 57, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Pohlmeier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Pohlmeier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Santos R. Rodriquez, Jr.

Mr. Rodriquez, 25, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rodriquez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rodriquez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Nebraska.

David E. Roth

Mr. Roth, 57, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Roth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Roth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Minnesota.

Kenneth R. Schleppy

Mr. Schleppy, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Schleppy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Schleppy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

John J. Shedlock

Mr. Shedlock, 36, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shedlock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shedlock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Jonathan W. Simoneau

Mr. Simoneau, 31, has had ITDM since 1996. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Simoneau understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Simoneau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New Hampshire.

Kenneth R. Stephenson

Mr. Stephenson, 55, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Stephenson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Stephenson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Jeffrey S. Toler

Mr. Toler, 50, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Toler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Toler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Herbert L. Turner

Mr. Turner, 48, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Turner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Turner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Florida.

Louis D. Valente

Mr. Valente, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Valente understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Valente meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Robert L. Westergaard

Mr. Westergaard, 28, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Westergaard understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Westergaard meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Mark A. Williams

Mr. Williams, 62, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Indiana.

Douglas J. Wood

Mr. Wood, 49, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

Robert A. Yerges

Mr. Yerges, 28, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yerges understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yerges meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Kyle S. Yount

Mr. Yount, 30, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yount understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yount meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Kentucky.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0041 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0041 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Issued on: June 20, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–15223 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2016–0034]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA confirms its decision to exempt 74 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions were effective on April 16, 2016. The exemptions expire on April 16, 2018.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 16, 2016, FMCSA published a notice of receipt of Federal diabetes exemption applications from 74 individuals and requested comments from the public (81 FR 14179. The public comment period closed on April 15, 2016, and 3 comments were received.

FMCSA has evaluated the eligibility of the 74 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 74 applicants have had ITDM over a range of 1 to 36 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 16, 2016, **Federal Register** notice and they will not be repeated in this notice.

III. Discussion of Comments

FMCSA received 3 comments in this proceeding. Jill Lewis believes exemptions should not be granted to those over the age of 70. Irene Medina and Daniel Adams believe exemptions should be granted to all listed in the notice. FMCSA's response to Jill Lewis's comment; "All drivers that are granted exemptions from the diabetes standard must be examined by a certified medical examiner, endocrinologist, and eye doctor, who determine if the driver is medically qualified to operate a CMV in interstate commerce. Therefore, if applicants over the age of 70 are determined to be medically qualified, there is no basis for denying them exemptions."

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Conclusion

Based upon its evaluation of the 74 exemption applications, FMCSA exempts the followirryng drivers from the diabetes requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above 949 CFR 391.64(b)):

Daniel S. Adams (ME)
Harold E. Adams, Sr. (IL)
Albert L. Alexander (IN)
Jerry J. Altenburg (WI)
Chris L. Austin (AL)
Cory M. Bessette (NY)
Daryl K. Birr (WI)
Jerry L. Brown (TN)
James R. Burch, II (NC)
Anthony K. Bush (OH)
Walter L. Butcher, IV (PA)
Russell E. Cadman (CO)
Mary L. Carr (NC)
Alexander W. Coleman (WA)
Earl J. Collier, Jr. (MA)
Carolyn J. Conover (TN)
Gary R. Craig (PA)
Sebastian Dacruz, Jr. (NJ)
Scott D. Davis (KS)
Richard W. Dentler (ID)
Troy A. Epps (MA)
Joel R. Farmer (ID)
Joseph A. Figueroa (MD)
Ronald Floyd (NY)
Donald W. Fowler, Jr. (NY)
Leonel E. Garcia-Bejar (TX)
William A. Garrett (GA)
Tyrone B. Gary, Sr. (PA)
Hardy D. Glanzer (ND)
David Guerrero (IL)
Bruce T. Hanson (MN)
Darrell E. Holtsoi (NM)
Roger J. Huffsmith (WA)
Joseph P. Hurston (MA)
Raymond W. James (AZ)
Kevin E. Johnson (TX)
Thomas A. Johnson (MN)
Calvin E. Jones, Jr. (VA)
Russell D. Koehler (WI)
Richard A. Lange (IL)
John K. Long (MA)
Russell J. Luedecker (NJ)
Eugene D. Maessner (ND)
Leroy A. Maines (PA)
Brady T. Mart (IA)
Kevin R. Martin (MO)
Jack L. McClintock (PA)
Luis A, Medina (CA)
Jimmie L. Melton (FL)
Robert J. Miller (VA)
Kirk A. Mosier (IA)
Daniel A. Neuens (WI)
Ephraim K. Njoroge (MA)
Mark C. Overbaugh (NY)
Mario A. Papa (RI)
Joseph F. Puliafico (NY)
James N. Rice III (SC)
Noble E. Risley (IL)
Jacob C. Rojan (IN)
Vincent Romeo (FL)
Marilyn Segarra (CT)
Jeffrey J. Smith (VA)
Ronald D. Smith (IN)
Kenneth W. Swisher (IL)
Melissa Tell (NY)
Jeremy N. Thompson (NY)
Charles R. Thompson, Jr. (KY)
William O. Wallen (IL)
Steven G. Wehrle (MO)
James H. Wilkey (ID)
Dion Williams, Jr. (ND)
Joseph M. Wilson, II (WA)
Scottie J. Wood (VA)
Jefferson Yazzie (NM)

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption is valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Dated: June 16, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–15219 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA- 2016–0042]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 58 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before July 28, 2016.

ADDRESSES: You may submit comments to the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0042 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 58 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Scott D. Allen

Mr. Allen, 54, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Allen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Allen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Nebraska.

Timothy K. Beal

Mr. Beal, 32, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beal understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beal meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Casey G. Bergman

Mr. Bergman, 31, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bergman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bergman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Minnesota.

Chad B. Bramblett

Mr. Bramblett, 28, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bramblett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bramblett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from North Carolina.

Robert J. Brearley, Jr.

Mr. Brearley, 32, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brearley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brearley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

Gary R. Butts

Mr. Butts, 59, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Butts understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butts meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Carey P. Cole

Mr. Cole, 35, has had ITDM since 1994. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

John W. Cyrus

Mr. Cyrus, 73, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cyrus understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cyrus meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Paul J. Dematas

Mr. Dematas, 29, has had ITDM since 2002. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dematas understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dematas meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

Tara DiPierri

Ms. DiPierri 46, has had ITDM since 2012. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. DiPierri understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. DiPierri meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class C CDL from New York.

William G. Edgell

Mr. Edgell, 46, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Edgell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Edgell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Ohio.

Robert M. Flory

Mr. Flory, 53, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Flory understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Flory meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Jason L. Garrett

Mr. Garrett, 27, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garrett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garrett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Faustino P. Garza

Mr. Garza, 57, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garza understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garza meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Robert D. Golding

Mr. Golding, 62, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Golding understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Golding meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

Bruce E. Gusler

Mr. Gusler, 59, has had ITDM since 2010. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gusler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gusler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Hampshire.

Seth R. Hamilton

Mr. Hamilton, 23, has had ITDM since 2007. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hamilton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamilton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

Travis L. Handy

Mr. Handy, 44, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Handy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Handy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class B CDL from Delaware.

Paul D. Hollenbeck

Mr. Hollenbeck, 53, has had ITDM since 2009. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hollenbeck understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hollenbeck meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Larry J. Huisman

Mr. Huisman, 55, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Huisman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huisman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Nebraska.

Brian J. Hurley

Mr. Hurley, 43, has had ITDM since 1976. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hurley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hurley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Illinois.

Jarmone W. Johnson

Mr. Johnson, 37, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Dan M. Kirk

Mr. Kirk, 56, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kirk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kirk meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Sung Y. Kong

Mr. Kong, 67, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kong understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kong meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

Kevin M. Krug

Mr. Krug, 46, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Krug understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krug meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

Brian C. Link

Mr. Link, 55, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Link understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Link meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from New York.

Timothy J. Loeschen

Mr. Loeschen, 31, has had ITDM since 1999. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Loeschen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Loeschen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Bruce A. Mattison

Mr. Mattison, 59, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mattison understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mattison meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

Brian K. McGowan

Mr. McGowan, 52, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McGowan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McGowan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arkansas.

James K. Medeiros

Mr. Medeiros, 63, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Medeiros understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Medeiros meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Rhode Island.

Brian C. Moffett, Jr.

Mr. Moffett, 26, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moffett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moffett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

Gregory S. Montierth

Mr. Montierth, 57, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Montierth understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Montierth meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

Daniel M. Mulligan

Mr. Mulligan, 49, has had ITDM since 1980. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mulligan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mulligan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

John N. Mulready, Jr.

Mr. Mulready, 58, has had ITDM since 2011. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mulready understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mulready meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Massachusetts.

Jerry L. Niichel

Mr. Niichel, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Niichel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Niichel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Donald S. Oakes

Mr. Oakes, 58, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Oakes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Oakes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Pennsylvania.

Ardell Parks

Mr. Parks, 46, has had ITDM since 1987. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Parks understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Parks meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Illinois.

Terry D. Paxton

Mr. Paxton, 69, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Paxton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Paxton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Lawrence C. Powers

Mr. Powers, 32, has had ITDM since 1996. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Powers understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Powers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable proliferative diabetic retinopathy. He holds a Class C CDL from Michigan.

Reynier Prieto

Mr. Prieto, 37, has had ITDM since 2012. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Prieto understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Prieto meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds an operator's license from Florida.

Charles V. Radford, Jr.

Mr. Radford, 50, has had ITDM since 1986. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Radford understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Radford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Manuel A. Samayoa

Mr. Samayoa, 67, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Samayoa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Samayoa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Georgia.

Malcolm D. Small

Mr. Small, 38, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Small understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Small meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Russell F. Smith

Mr. Smith, 47, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

Trenton W. Socha

Mr. Socha, 24, has had ITDM since 1999. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Socha understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Socha meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Texas.

Edward D. Sprague

Mr. Sprague, 69, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sprague understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sprague meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Carla J. Stafford

Ms. Stafford, 48, has had ITDM since 2015. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Stafford understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Stafford meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Tennessee.

Jennifer N. Stout

Ms. Stout, 34, has had ITDM since 2011. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Stout understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Stout meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Texas.

Virgil W. Sykes

Mr. Sykes, 50, has had ITDM since 2008. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sykes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sykes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

Luis M. Torres

Mr. Torres, 38, has had ITDM since 2013. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Torres understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Torres meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Connecticut.

Lyle D. Tunink

Mr. Tunink, 74, has had ITDM since 2004. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tunink understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tunink meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

Fasitupe Tupuola

Mr. Tupuola, 60, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tupuola understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tupuola meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Christa VanHook

Ms. VanHook, 69, has had ITDM since 2010. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. VanHook understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. VanHook meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds an operator's license from Kentucky.

Saverio Verre

Mr. Verre, 62, has had ITDM since 1998. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Verre understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Verre meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Raymond R. Webker

Mr. Webker, 61, has had ITDM since 2016. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Webker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Webker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Ohio.

James A. Wiggins

Mr. Wiggins, 56, has had ITDM since 2003. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wiggins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wiggins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Oklahoma.

Reed R. Wilken

Mr. Wilken, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilken understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilken meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Abraham K. Yohannan

Mr. Yohannan, 61, has had ITDM since 1991. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yohannan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yohannan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR

52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0042 and click the search button. When the new screen appears, click on the blue "Comment Now!" button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

V. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0042 and click "Search." Next, click "Open Docket Folder" and you will find all documents and comments related to this notice.

Issued on: June 20, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–15220 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–2575; FMCSA–2011–0193; FMCSA–2011–0194; FMCSA–2013–0183; FMCSA–2013–0186; FMCSA–2013–0188; FMCSA–2013–0189]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce for 90 individuals. FMCSA has statutory authority to exempt individuals from this rule if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: Each group of renewed exemptions are effective from the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5:00 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

You may submit comments using the following Federal Docket Management System (FDMS) Docket Nos. discussed in this notice using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

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[1] Section 4129(a) refers to the 2003 notice as a "final rule." However, the 2003 notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

II. Background

On November 6, 2015, FMCSA published a notice of intent to renew the exemptions of drivers who have previously held exemptions, and requested comments from the public (80 FR 68895). The 90 individuals have held exemptions from the Agency's rule prohibiting persons with ITDM from operating CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver. FMCSA encourages you to participate by submitting comments and related materials.

IV. Basis for Renewing Exemptions

This notice addresses 90 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 90 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of November and are discussed below.

As of November 1, 2015 the following 17 individuals have satisfied conditions for obtaining a renewed exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 50482; 78 FR 65754; 80 FR 68895):

John K. Abels (IL)
Dean A. Bacon (IN)
Philip E. Banks (OH)
Anthony M. Bride (NJ)
Charles E. Dailey (AL)
Kenneth D. Denny (WA)
Adam M. Hogue (MS)
Allen D. LaFave (ND)
Greg P. Mason (NY)
Thomas D. Miller (MT)
Douglas A. Mulligan (KY)
David G. Peters (PA)
Robert J. Rispoli, Jr. (NY)
Mike P. Senn (MN)
Hames H. Suttles (AL)
Gregory F. Wendt (NE)
Michael J. Wickstrom (MI)

The drivers were included in Docket No. FMCSA–2013–0183. Their exemptions are effective as of November 1, 2015 and will expire on November 1, 2017.

As of November 6, 2015, the following individual, George J. Ehnot (PA), has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (78 FR 56988; 78 FR 67459; 80 FR 68895).

The driver was included in Docket No. FMCSA–2013–0186. The exemption is effective as of November 6, 2015 and will expire on November 6, 2017.

As of November 9, 2015, the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driviing CMVs in interstate commerce. (78 FR 55460; 78 FR 69795; 80 FR 68895):

Mark A. Blanton (IN)
Howard T. Cash (IL)
Heath J. Chesser (AL)
Kevin F. Connacher (PA)
Darryl A. Daniels (OH)
Carrie L. Frisby (CA)
Dean M. Keeven (MI)
Christopher A. Labudde (IL)
Brian A. Mankowski (IL)
Robert E. Welling (OH)
Keith Weymouth (ME)

The drivers were included in Docket No. FMCSA–2011–0193. Their exemptions are effective as of November 9, 2015 and will expire on November 9, 2017. As of November 12, 2015, the following 24 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (78 FR 56988; 78 FR 67459; 80 FR 68895):

Charles E. Andersen (MN)
Philip B. Blythe (IL)
Ryan T. Byndas (AZ)
Winfred G. Clemenson (WA)
Michael C. Crewse (IL)
James D. Crosson, Jr. (MN)
Bruce E. Feltenbarger (MI)
Charles A. Fleming (VA)
Brian W. Hannah (UT)
Michael P. Huck (MI)
Van K. Jarrett (KY)
Keith W. Lewis (MO)
Eugene M. Mikell (NH)
Ronny J. Moreau (NH)
James M. O'Rourke (MA)
Joshua T. Paumer (MT)
Vladimir B. Petkov (MO)
Luther S. Pickell (KS)
Robert J. Pulliam (AZ)
Andrew W. Sprester (ND)
Vincent J. Terrizzi, Sr. (PA)
Daniel C. Theis (FL)
Richard A. White (TN)
Mark A. Winning (IL)

The drivers were included in Docket No. FMCSA–2013–0186. Their exemptions are effective as of November 12, 2015 and will expire on November 12, 2017.

As of November 16, 2015, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (76 FR 61140; 76 FR 71111; 80 FR 68895):

Mark D. Andersen (IA)
David A. Basher (MA)
Brian H. Berthiaume (VT)
Eric D. Blocker, Sr. (NC)
Berry W. Campbell (WI)
Raymond A. Jack (WA)
Quency T. Johnson (WI)
Kenny B. Keels, Jr. (SC)
Jason M. Pritchett (MI)
Steven R. Sibert (MN)
Cassie J. Silbernagel (SD)
Lewis B. Taylor (IL)
James A. Terilli (NY)

The drivers were included in Docket No. FMCSA–2011–0194. Their exemptions are effective as of November 16, 2015 and will expire on November 16, 2017.

As of November 19, 2015, the following individual, Marshall H. Evans (IL), has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 63280; 76 FR 76398; 80 FR 68895).

The driver was included in Docket No. FMCSA–2013–0188. The exemption is effective as of November 19, 2015 and will expire on November 19, 2017.

As of November 20, 2015, the following 22 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (71 FR 58464; 71 FR 67201; 80 FR 68895):

John N. Anderson (MN)
Allan C. Boyum (MN)
Terry L. Brantley (NC)
Steven E. Brechting (MI)
Scott A. Carlson (WI)
Joseph L. Coggins (SC)
Stephanie D. Fry (WY)
Robert W. Gaultney, Jr. (MD)
Paul T. Kubish (WI)
David M. Levy (NY)
Sterling C. Madsen (UT)
David F. Morin (CA)
Jeffrey J. Morinelli (NE)
Ronald D. Murphy (WV)
Charles B. Page (PA)
John A. Remaklus (OH)
Michael D. Schooler (IN)
Arthur L. Stapleton, Jr. (OH)
Carolyn J. Taylor (IN)
Jeffrey M. Thew (WA)
Barney J. Wade (MS)
Dennis D. Wade (IL)

The drivers were included in Docket No. FMCSA–2006–2575. Their exemptions are effective as of November 20, 2015 and will expire on November 20, 2017.

As of November 22, 2015, the following individual, Steven R. Auger (NH), has satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (76 FR 63295; 76 FR 76400; 80 FR 68895).

The driver was included in Docket No. FMCSA–2013–0189. The exemption is effective as of November 22, 2015 and will expire on November 22, 2017.

Each of these 90 drivers qualifies for a renewal of the exemption. They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of the 90 drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual submit an annual ophthalmologist's or optometrist's report; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

VI. Conclusion

Based upon its evaluation of the 90 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce in 49 CFR 391.64(3).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period and the drivers remain in good standing with the program, have maintained their required medical monitoring, and have not exhibited any medical issues that would compromise their ability to safely operate a CMV, they are eligible to receive a renewal from FMCSA under procedures in effect at that time.

Issued on: June 20, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–15222 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0029]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before July 28, 2016. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0029 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or

Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

FOR FURTHER INFORMATION CONTACT: Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 23 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

II. Qualifications of Applicants

Patrick R. Beallis

Mr. Beallis, 49, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, "In my opinion, Mr. Beallis has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Beallis reported that he has driven straight trucks for 24 years, accumulating 60,000 miles. He holds an operator's license from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary A. Brown

Mr. Brown, 70, has had central chorioretinitis in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2016, his optometrist stated, "Pt. [*sic*] has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Brown reported that he has driven straight trucks for 53 years, accumulating 265,000 miles, and tractor-trailer combinations for 39 years, accumulating 195,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dudley G. Diebold

Mr. Diebold, 75, has a prosthetic left eye due to a traumatic incident in 1981. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his ophthalmologist stated, "The patient has sufficient vision to perform a driving test required to operate a commercial vehicle." Mr. Diebold reported that he has driven straight trucks for 60 years, accumulating 600,000 miles. He holds a Class A CDL from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David L. Evers

Mr. Evers, 65, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2016, his optometrist stated, "In my opinion, David has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Evers reported that he has driven straight trucks for 18 years, accumulating 280,800 miles, and tractor-trailer combinations for 29 years, accumulating 3.2 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John M. Harris

Mr. Harris, 39, has had optic nerve hypoplasia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/400. Following an examination in 2016, his optometrist stated, "His corrected vision in his OD renders him safe to drive a commercial vehicle." Mr. Harris reported that he has driven straight trucks for 15 years, accumulating 105,000 miles, and tractor-trailer combinations for 4 years, accumulating 100,000 miles. He holds an operator's license from Mississippi. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Raymond E. Hogue

Mr. Hogue, 55, has had ocular histoplasmosis in his right eye since 2006. The visual acuity in his right eye is 20/400, and in his left eye, 20/30. Following an examination in 2016, his ophthalmologist stated, "I believe that Raymond, in my medical opinion, would have sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Hogue reported that he has driven straight trucks for 8 years, accumulating 40,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.3 million miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael E. Jones

Mr. Jones, 53, has a prosthetic right eye due to a traumatic incident in 2010. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2016, his optometrist stated, "His color vision is not impaired and he should have no visual difficulties performing the driving tasks required to operate a commercial vehicle." Mr. Jones reported that he has driven straight trucks for 4 years, accumulating 80,000 miles, and tractor-trailer combinations for 17 years, accumulating 1.7 million miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert L. Jones

Mr. Jones, 61, has had glaucoma in his left eye since 2000. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, "The patient has successfully driven a commercial vehicle for many years. In the absence of any change in his visual function, I see no indication that he could not continue to do so." Mr. Jones reported that he has driven straight trucks for 14 years, accumulating 140,000 miles, and tractor-trailer combinations for 16 years, accumulating 960,000 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard A. Kolodziejczyk

Mr. Kolodziejczyk, 48, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "I do certify that in my medical opinion, Richard does have sufficient vision to [*sic*], visual skills, and visual-motor skills to perform the driving tasks necessary to operate a commercial vehicle." Mr. Kolodziejczyk reported that he has driven straight trucks for 16 years, accumulating 748,800 miles. He holds an operator's license from Connecticut. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Dean A. Lardieri

Mr. Lardieri, 58, has a macular scar in his right eye due to a traumatic incident in 1978. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "In my opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Lardieri reported that he has driven straight trucks for 25 years, accumulating 437,500 miles. He holds an operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Darius R. Law

Mr. Law, 31, has had complete loss of vision in his right eye since 2011. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "In my opinion, Darius Law has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Law reported that he has driven straight trucks for 3 years, accumulating 12,000 miles, and tractor-trailer combinations for 1 year, accumulating 250 miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert C. Martin

Mr. Martin, 59, has a prosthetic left eye due to a traumatic incident in 1976. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, "It is my medical opinion that Robert has sufficient vision to perform driving task [*sic*] required to operate a commercial vehicle." Mr. Martin reported that he has driven straight trucks for 34 years, accumulating 850,000 miles, and tractor-trailer combinations for 34 years, accumulating 850,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark. W. Mc Taggart

Mr. Mc Taggart, 42, has had macular pigment epithelial detachment in his left eye since 2011. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2016, his optometrist stated, "In my professional opinion Mark has vision sufficient to operate a commercial vehicle with no improvement." Mr. Mc Taggart reported that he has driven straight trucks for 15 years, accumulating 150,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Hobie S. Morse

Mr. Morse, 21, has complete loss of vision in his left eye due to a traumatic incident in 2004. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2016, his optometrist stated, "It is my professional opinion that Mr. Morse has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Morse reported that he has driven straight trucks for 1.5 years, accumulating 45,000 miles, and tractor-trailer combinations for 1.5 years, accumulating 26,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Noel Munoz

Mr. Munoz, 59, has had a macular scar in his right eye due to central serous retinopathy since 2008. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my medical opinion that Noel Munoz has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Munoz reported that he has driven straight trucks for 30 years, accumulating 660,000 miles, and tractor-trailer combinations for 30 years, accumulating 360,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frank C. Newberry

Mr. Newberry, 57, has complete loss of vision in his right eye due to a traumatic incident in 2000. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "He has had no changes in his vision which would interfere with his driving. He should have the same driving capability now as he has had over the past 16 years." Mr. Newberry reported that he has driven straight trucks for 36 years, accumulating 75,000 miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Peter J. O'Connell

Mr. O'Connell, 40, has a macular hole in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "It is my opinion that given the longstanding nature of Peter's stable ocular injury and his ability to compensate for it for the past 30 years, he should possess sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. O'Connell reported that he has driven straight trucks for 9 years, accumulating 374,400 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James M. Paul

Mr. Paul, 64, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "U.S. Department of Transportation Vision Program . . . In my opinion, Mr. Paul has sufficient vision to perform the driving tasks required as has been the case in the past." Mr. Paul reported that he has driven straight trucks for 41 years, accumulating 738,000 miles, and tractor-trailer combinations for 41 years, accumulating 738,000 miles. He holds a Class AMV CDL from Alabama. His driving record for the last 3 years shows one crash, to which he did not contribute and for which he was not cited, and no convictions for moving violations in a CMV.

Ivan Romero

Mr. Romero, 28, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is light perception, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Based on results from the examination and driving history without incident it appears that Mr. Romero qualifies to meet criteria for an exemption from the vision standards in Federal Motor Carrier Safety Regulations." Mr. Romero reported that he has driven straight trucks for 4 years, accumulating 160,000 miles, and tractor-trailer combinations for 4 years, accumulating 188,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard M. Rosales

Mr. Rosales, 35, has aphakia in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2016, his ophthalmologist stated, "In my professional opinion he has sufficient vision to perform the required driving task [*sic*] to operate a commercial vehicle." Mr. Rosales reported that he has driven straight trucks for 6 years, accumulating 18,720 miles. He holds an operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey L. Tanner

Mr. Tanner, 44, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, "In my opinion, Mr. Tanner can safely see to navigate a commercial vehicle." Mr. Tanner reported that he has driven straight trucks for 2 years, accumulating 2,000 miles, and tractor-trailer combinations for 1 year, accumulating 7,000 miles. He holds a Class A CDL from Wyoming. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Steve A. Taylor

Mr. Taylor, 53, has aphakia in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2016, his optometrist stated, "Mr. Taylor has more than adequate vision to operate a commercial vehicle." Mr. Taylor reported that he has driven tractor-trailer combinations for 28 years, accumulating 23,400 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Donald P. Winters

Mr. Winters, 63, has had refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/50. Following an examination in 2015, his optometrist stated, "Based on all of the above information regarding Mr. Winters [*sic*] ocular status, it is my opinion that Mr. Winters does possess sufficient vision to operate a commercial vehicle safely and would be visually capable of performing any necessary driving tasks required." Mr. Winters reported that he has driven tractor-trailer combinations for 31 years, accumulating 3.88 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows one crash, for which he was not at fault and no convictions for moving violations in a CMV.

III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2016–0029 in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert the docket number FMCSA–2016–0029 in the "Keyword" box and click "Search." Next, click "Open Docket Folder" button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: June 17, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–15221 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0023]

Extension of a Previously Approved Collection: Public Charters, 14 CFR Part 380

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on Public Charters, 14 CFR part 380. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 24, 2016 (81 FR 15787). No comments were received.

DATES: Written comments should be submitted by July 28, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202–366–1865) and Mr. Brett Kruger (202–366–8025), Office of the Secretary, Office of International Aviation, Special Authorities Division-X46, 1200 New Jersey Ave. SE., Washington, DC 20590.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Extension of a Previously Approved Collection: The current OMB inventory has not changed.

Abstract: 14 CFR part 380 establishes regulations embodying the Department's terms and conditions for Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is often less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534, 4535, and supporting financial documents) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

As an additional matter, the Department's Office of Aviation Enforcement and Proceedings has the authority to pursue or not to pursue enforcement action against airlines or other sellers of air transportation with respect to air travel consumer protection. As a matter of enforcement policy, the Office of Aviation Enforcement and Proceedings will not take action against Public Charter applicants (including public charter operators, direct air carriers and securers) that do not submit an original and two copies of a charter prospectus so long as (1) the Public Charter applicant submits fully completed and signed electronic copies of the original documents of OST Forms 4532, 4533, 4534, and, if applicable, 4535 (including signatures); and (2) the Public Charter applicant continues to submit original financial documents such as Letters of Credit, Surety Trust Agreements, and Surety Bonds.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector filer. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. If an operator chooses to make changes to a previously approved charter operation, then the operator is required by the regulations to file revisions to its original prospectus.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.).

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891 hours.

Frequency of Responses

245 (respondents) × 4 = 980.

401 (amendments *from the same respondents*) × 2 = 802.

Total estimated responses: 980 + 802 = 1,782.

The frequency of response is dependent upon whether the operator is requesting a new program or amending an existing prospectus. Variations occur due to the respondents' criteria. On average four responses (forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891 hours.

Approximately 1,782 (responses) × 0.50 (per form) = 891.

Public Comments Invited: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on June 20, 2016.

Habib Azarsina,

OST Privacy & PRA Officer, Office of the Secretary.

[FR Doc. 2016–15286 Filed 6–27–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Accountable Official Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Accountable Official Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

DATES: Written comments should be received on or before August 29, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sean Kemple, Agency Enterprise Solutions Division; 401 14th Street SW., Room 348E, Washington, DC 20227, (202) 874–0132.

SUPPLEMENTARY INFORMATION:

Title: Accountable Official Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

OMB Number: 1530–0020 (Previously approved as 1510–0078 as a collection conducted by Department of the Treasury/Financial Management Service.).

Transfer of OMB Control Number: Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by FMS and BPD will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 2888.

Abstract: This form is used to collect information from accountable officials requesting enrollment in the Treasury SVC program in their official capacity, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts that may become due and owning as a result of the use of the cards.

This information is collected under the authority in: 31 U.S.C. 321, General Authority of the Secretary of the Treasury; Public Law 104–134, Debt Collection Improvement Act of 1996, as amended; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, as amended; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 1322, Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 31 U.S.C. 7701, Taxpayer identifying number; 37 U.S.C. 1007, Deductions from pay; 31 CFR part 210, Federal Government Participation in the Automated Clearing House; 31 CFR part 285, Debt Collection Authorities under the Debt Collection Improvement Act of 1996; and E.O. 9397 (SSN), as amended.

The information on this form may be disclosed as generally permitted under 5 U.S.C. 552(a)(b) of the Privacy Act of 1974, as amended. It may be disclosed outside of the U.S. Department of the Treasury to its Fiscal and Financial Agents and their contractors involved in providing SVC services, or to the Department of Defense (DoD) for the purpose of administering the Treasury SVC programs. In addition, other Federal, State, or local government agencies that have identified a need to know may obtain this information for the purpose(s) as identified by Fiscal Service's Routine Uses as published in the **Federal Register**.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,250.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 13, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–15212 Filed 6–27–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

DATES: Written comments should be received on or before August 29, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Sean Kemple, Agency Enterprise Solutions Division; 401 14th Street SW., Room 348E, Washington, DC 20227, (202) 874–0132.

SUPPLEMENTARY INFORMATION:

Title: Application Form for U.S. Department of the Treasury Stored Value Card (SVC) Program.

OMB Number: 1530–0013 (Previously approved as 1510–0079 as a collection conducted by Department of the Treasury/Financial Management Service.) Transfer of OMB Control Number: Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by FMS and BPD will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 2887.

Abstract: This form is used to collect information from individuals requesting enrollment in the Treasury SVC program, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts. Disclosure of the information requested on the form is voluntary; however, failure to furnish the requested information may significantly delay or prevent participation in the Treasury SVC program.

This information is collected under the authority in: 31 U.S.C. 321, General Authority of the Secretary of the Treasury; Public Law 104–134, Debt Collection Improvement Act of 1996, as amended; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, as amended; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 1322, Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 31 U.S.C. 7701, Taxpayer identifying number; 37 U.S.C. 1007, Deductions from pay; 31 CFR part 210, Federal Government Participation in the Automated Clearing House; 31 CFR part 285, Debt Collection Authorities under the Debt Collection Improvement Act of 1996; and E.O. 9397 (SSN), as amended.

The information on this form may be disclosed as generally permitted under 5 U.S.C. 552(a)(b) of the Privacy Act of 1974, as amended. It may be disclosed outside of the U.S. Department of the Treasury to its Fiscal and Financial Agents and their contractors involved in providing SVC services, or to the Department of Defense (DoD) for the purpose of administering the Treasury SVC programs. In addition, other Federal, State, or local government agencies that have identified a need to know may obtain this information for the purpose(s) as identified by Fiscal Service's Routine Uses as published in the **Federal Register**.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 10,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Date: June 13, 2016.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2016–15211 Filed 6–27–16; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the name of one individual whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13413, and whose name has been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective June 23, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, Department of the Treasury, or Office of the Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, in the Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's Web site (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On June 23, 2016 OFAC blocked the property and interests in property of the following individual pursuant to E.O. 13413, "Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo":

1. KANYAMA, Celestin (Latin: KANYAMA, Céléstin) (a.k.a. KANYAMA TSHISIKU, Celestin; a.k.a. KANYAMA, Celestin Cishiku); DOB 04 Oct 1960; POB Kananga, Democratic Republic of the Congo; nationality Congo, Democratic Republic of the; Gender Male; Passport OB0637580 issued 20 May 2014 expires 19 May 2019; Kinshasa Police Chief (individual) [DRCONGO].

Dated: June 23, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–15205 Filed 6–27–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Solicitation of Nomination for Appointment to the Advisory Committee on Women Veterans

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is seeking nominees to be considered for membership on the Advisory Committee on Women Veterans (Committee) for the 2016 membership cycle. The Committee is authorized by 38 U.S.C. 542 (the statute), to provide advice to the Secretary of Veterans Affairs (Secretary) on: The administration of VA's benefits and services (health care, rehabilitation benefits, compensation, outreach, and other relevant programs) for women Veterans; reports and studies pertaining to women Veterans; and the needs of women Veterans. In accordance with the statute and the Committee's current charter, the majority of the membership shall consist of non-Federal employees appointed by the Secretary from the general public, serving as special government employees.

The Committee provides a Congressionally-mandated report to the Secretary each even-numbered year, which includes: An assessment of the needs of women Veterans, with respect to compensation, health care, rehabilitation, outreach, and other benefits and programs administered by VA; a review of the programs and activities of VA designed to meet such needs; and other recommendations (including recommendations for

administrative and legislative action), as the Committee considers appropriate. The Committee reports to the Secretary, through the Director of the Center for Women Veterans.

The Secretary appoints Committee members, and determines the length of terms in which Committee members serve. A term of service for any member may not exceed 3 years. However, the Secretary can reappoint members for additional terms. Each year, there are several vacancies on the Committee, as members' terms expire.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals should accompany the package when it is submitted. Non-Veterans are also eligible for nomination.

In accordance with recently revised guidance regarding the ban on lobbyists serving as members of advisory boards and commissions, Federally-registered lobbyists are prohibited from serving on Federal advisory committees in an individual capacity. Additional information regarding this issue can be found at *www.federalregister.gov/articles/2014/08/13/2014-19140/revised-guidance-on-appointment-of-lobbyists-to-federal-advisory-committees-boards-and-commissions.*

SUPPLEMENTARY INFORMATION: The Committee is currently comprised of 12 members. By statute, the Committee consists of members appointed by the Secretary from the general public, including: Representatives of women Veterans; individuals who are recognized authorities in fields pertinent to the needs of women Veterans, including the gender specific health-care needs of women; representatives of both female and male Veterans with service-connected disabilities, including at least one female Veteran with a service-connected disability and at least one male Veteran with a service-connected disability; and women Veterans who are recently separated from service in the Armed Forces.

The Committee meets at least two times annually, which may include a site visit to a VA field location. In accordance with Federal Travel Regulation, VA will cover travel expenses—to include per diem—for all members of the Committee, for any travel associated with official Committee duties. A copy of the Committee's most recent charter and a list of the current membership can be found at *www.va.gov/ADVISORY/* or *www.va.gov/womenvet/*.

The Department makes every effort to ensure that the membership of its advisory committees is fairly balanced, in terms of points of view represented. In the review process, consideration is given to nominees' potential to address the Committee's demographic needs (regional representation, race/ethnicity representation, professional expertise, war era service, gender, former enlisted or officer status, branch of service, etc.). Other considerations to promote a balanced membership include longevity of military service, significant deployment experience, ability to handle complex issues, experience running large organizations, and ability to contribute to the gender-specific health care and benefits needs of women Veterans.

Nomination Package Requirements

Nomination packages must be typed (12 point font) and include: (1) A cover letter from the nominee, and (2) a current resume that is no more than four pages in length. The cover letter must summarize: the nominees' interest in serving on the committee and contributions she/he can make to the work of the committee; any relevant Veterans service activities she/he is currently engaged in; the military branch affiliation and timeframe of military service (if applicable). To promote a balanced membership, please provide information about your personal and professional qualifications and background that would give you a diverse perspective on women Veterans matters. Finally, please include in the cover letter the nominee's complete contact information (name, address, email address, and phone number); and a statement confirming that she/he is not a Federally-registered lobbyist. The resume should show professional work experience, and Veterans service involvement, especially service that involves women Veterans' issues.

Nominations for membership on the Committee must be received by August 1, 2016, no later than 4:00 p.m., eastern standard time. Packages received after this time will not be considered for the current membership cycle. All nomination packages should be sent to the Advisory Committee Management Office by email (recommended) or mail.

Please see contact information below.

Advisory Committee Management Office (00AC), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, *VA.Advisory.Cmte@va.gov.*

Dated: June 23, 2016.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–15241 Filed 6–27–16; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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FEDERAL REGISTER

Vol. 81 Tuesday,
No. 124 June 28, 2016

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 43, 61, et al.

Operation and Certification of Small Unmanned Aircraft Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183

[Docket No.: FAA–2015–0150; Amdt. Nos. 21–99, 43–48, 61–137, 91–343, 101–9, 107–1, 119–18, 133–15, and 183–16]

RIN 2120–AJ60

Operation and Certification of Small Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA) and Office of the Secretary of Transportation (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is amending its regulations to allow the operation of small unmanned aircraft systems in the National Airspace System. These changes address the operation of unmanned aircraft systems and certification of their remote pilots. This rule will also prohibit model aircraft from endangering the safety of the National Airspace System.

DATES: This final rule is effective August 29, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For small UAS technical questions concerning this final rule, contact Lance Nuckolls, Flight Technologies and Procedures Division, AFS–400, 470 L'Enfant Plaza SW., Suite 4102, Washington, DC 20024; telephone 1–844–FLY–MYUAS; email *UAShelp@faa.gov.*

For FAA small UAS policy questions concerning this final rule, contact Everette Rochon, Manager, Commercial Operations Branch, AFS–820, Flight Standards Service, Federal Aviation Administration, 55 M Street SE., 8th Floor, Washington, DC 20003; telephone 1–844–FLY–MYUAS; email *UAShelp@faa.gov.*

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List of Abbreviations and Acronyms Frequently Used in This Document

AC—Advisory Circular
AGL—Above Ground Level
ACR—Airman Certification Representative
ADS–B—Automatic Dependent Surveillance-Broadcast
ARC—Aviation Rulemaking Committee
ATC—Air Traffic Control
CAFTA-DR—Dominican Republic-Central America-United States Free Trade Agreement
CAR—Civil Air Regulation
CFI—Certificated Flight Instructor
CFR—Code of Federal Regulations
COA—Certificate of Waiver or Authorization
DPE—Designated Pilot Examiner
FR—Federal Register
FSDO—Flight Standards District Office
ICAO—International Civil Aviation Organization
NAFTA—North American Free Trade Agreement
NAS—National Airspace System
NOTAM—Notice to Airmen
NPRM—Notice of Proposed Rulemaking
NTSB—National Transportation Safety Board
PIC—Pilot in Command
Pub. L.—Public Law
PMA—Parts Manufacturer Approval
TCAS—Traffic Collision Avoidance System
TFR—Temporary Flight Restriction
TSA—Transportation Security Administration
TSO—Technical Standard Order
UAS—Unmanned Aircraft System
U.S.C.—United States Code

I. Executive Summary

A. Purpose of the Regulatory Action

This rule finalizes the notice of proposed rulemaking entitled *Operation and Certification of Small Unmanned Aircraft Systems* [1] (the NPRM). The NPRM proposed operating and certification requirements to allow small unmanned aircraft systems (small UAS) to operate for non-hobby and non-recreational purposes.[2] A small UAS consists of a small unmanned aircraft (which, as defined by statute, is an unmanned aircraft weighing less than 55 pounds [3]) and equipment necessary for the safe and efficient operation of that aircraft. The FAA has accommodated non-recreational small UAS use through various mechanisms, such as special airworthiness certificates, exemptions, and certificates of waiver or authorization (COAs). This rule is the next phase of integrating small UAS into the NAS.

The following are examples of possible small UAS operations that can be conducted under the framework in this rule:

- Crop monitoring/inspection;
- Research and development;
- Educational/academic uses;
- Power-line/pipeline inspection in hilly or mountainous terrain;
- Antenna inspections;
- Aiding certain rescue operations;
- Bridge inspections;
- Aerial photography; and
- Wildlife nesting area evaluations.

Because of the potential societally beneficial applications of small UAS, the FAA has been seeking to incorporate the operation of these systems into the national airspace system (NAS) since 2008. In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 directed the Secretary to determine whether UAS operations posing the least amount of public risk and no threat to national security could safely be operated in the NAS and, if so, to establish requirements for the safe operation of these systems in the NAS, prior to completion of the UAS comprehensive plan and rulemakings required by section 332 of Public Law 112–95.

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[1] 80 FR 9544, Feb. 23, 2015.

[2] As used here, "non-hobby and non-recreational purposes" refers to small UAS that are not operated in accordance with section 336 of Public Law 112–95. A discussion of section 336 can be found below in section III.C.4 of this preamble.

[3] Public Law 112–95, sec. 331(6).

On February 23, 2015, as part of its ongoing efforts to integrate UAS operations in the NAS and in accordance with section 333 of Public Law 112–95, the FAA issued the NPRM proposing to amend its regulations to adopt specific rules for the operation of small UAS in the NAS. Over 4,600 public comments were submitted in response to the NPRM. The FAA has considered the comments, and now issues this final rule to integrate small UAS into the NAS.

Based on its consideration of the comments submitted in response to the NPRM, and its experience with the certification, exemption, and COA process, the FAA has developed the framework in this rule to enable certain small UAS operations to commence upon adoption of this rule and accommodate technologies as they evolve and mature. This framework allows small UAS operations for many different non-recreational purposes, such as the ones discussed previously, without requiring airworthiness certification, exemption, or a COA.

B. Summary of the Major Provisions of the Regulatory Action

This rule will add a new part 107 to Title 14 Code of Federal Regulations (14 CFR) to allow for routine civil operation of small UAS in the NAS and to provide safety rules for those operations. Consistent with the statutory definition, this rule will define small UAS as UAS that use unmanned aircraft weighing less than 55 pounds. To mitigate risk, the rule will limit small UAS to daylight and civil twilight operations with appropriate collision lighting, confined areas of operation, and visual-line-of-sight operations. This rule will also address airspace restrictions, remote pilot certification, visual observer requirements, and operational limits in order to maintain the safety of the NAS and ensure that small UAS do not pose a threat to national security. Because UAS constitute a quickly changing technology, a key provision of this rule is a waiver mechanism to allow individual operations to deviate from many of the operational restrictions of this rule if the Administrator finds that the proposed operation can safely be conducted under the terms of a certificate of waiver.

Below is a summary of the major provisions of the rule.

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107

Operational Limitations	• Unmanned aircraft must weigh less than 55 lbs. (25 kg). • Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer. • At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses. • Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle. • Daylight-only operations, or civil twilight (30 minutes before official sunrise to 30 minutes after official sunset, local time) with appropriate anti-collision lighting. • Must yield right of way to other aircraft. • May use visual observer (VO) but not required. • First-person view camera cannot satisfy "see-and-avoid" requirement but can be used as long as requirement is satisfied in other ways. • Maximum groundspeed of 100 mph (87 knots). • Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure. • Minimum weather visibility of 3 miles from control station. • Operations in Class B, C, D and E airspace are allowed with the required ATC permission. • Operations in Class G airspace are allowed without ATC permission. • No person may act as a remote pilot in command or VO for more than one unmanned aircraft operation at one time. • No operations from a moving aircraft. • No operations from a moving vehicle unless the operation is over a sparsely populated area. • No careless or reckless operations. • No carriage of hazardous materials. • Requires preflight inspection by the remote pilot in command. • A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. • Foreign-registered small unmanned aircraft are allowed to operate under part 107 if they satisfy the requirements of part 375. • External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft. • Transportation of property for compensation or hire allowed provided that— ○ The aircraft, including its attached systems, payload and cargo weigh less than 55 pounds total; ○ The flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and ○ The flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession. • Most of the restrictions discussed above are waivable if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.
Remote Pilot in Command Certification and Responsibilities.	

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107—Continued

	• Establishes a remote pilot in command position. • A person operating a small UAS must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command). • To qualify for a remote pilot certificate, a person must: ○ Demonstrate aeronautical knowledge by either: ■ Passing an initial aeronautical knowledge test at an FAA-approved knowledge testing center; or ■ Hold a part 61 pilot certificate other than student pilot, complete a flight review within the previous 24 months, and complete a small UAS online training course provided by the FAA. ○ Be vetted by the Transportation Security Administration. ○ Be at least 16 years old. • Part 61 pilot certificate holders may obtain a temporary remote pilot certificate immediately upon submission of their application for a permanent certificate. Other applicants will obtain a temporary remote pilot certificate upon successful completion of TSA security vetting. The FAA anticipates that it will be able to issue a temporary remote pilot certificate within 10 business days after receiving a completed remote pilot certificate application. • Until international standards are developed, foreign-certificated UAS pilots will be required to obtain an FAA-issued remote pilot certificate with a small UAS rating. A remote pilot in command must: • Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the rule. • Report to the FAA within 10 days of any operation that results in at least serious injury, loss of consciousness, or property damage of at least $500. • Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation. • Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2). A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency.
Aircraft Requirements	• FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation.
Model Aircraft	• Part 107 does not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. • The rule codifies the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.

C. Costs and Benefits

Technological advances in small UAS have led to a potential commercial market for their uses by providing a safe operating environment for them and for other aircraft in the NAS. In addition to enabling this industry to develop, the FAA anticipates that this final rule will provide an opportunity to substitute small UAS operations for some risky manned flights, such as inspection of houses, towers, bridges, or parks, thereby averting potential fatalities and injuries.

The FAA has analyzed the benefits and the costs associated with this final rule. The estimated out-of-pocket cost for an individual to become FAA certificated as a remote pilot with a small UAS rating is $150, which is less than the cost of any other airman certification that allows non-recreational operations in the NAS.[4] The final rule will enable a new industry to unfold while imposing relatively low individual costs. The private sector expected benefits exceed private sector expected costs because each entity voluntarily chooses to incur the compliance cost of this rule in anticipation that their benefits exceed the costs. The sum of these entities' actions results in societal benefits which exceed societal costs when government costs are also taken into account. The FAA has quantified these benefits by estimating consumer surplus resulting from future commercial operations. Benefits to society equal the consumer surplus minus certain additional costs discussed.

The regulatory analysis for this final rule presents two scenarios in order to present a range for costs—a high case and a low case. The scenarios are based on two fleet forecasts that were prepared independently at separate times. As a result, the high case and low case projections for small UAS sales, fleet, and pilots differ significantly.

Depending on which small UAS forecast is used, the FAA expects this rule will result in a net social benefit ranging from about $733 million in the low case to about $9.0 billion in the high case over five years.[5]

II. Background

This final rule addresses the operation and airman certification of civil small UAS. The following sections discuss: (1) The public risk associated with small UAS operations; (2) the current legal framework governing small UAS operations; and (3) the FAA's ongoing efforts to incorporate small UAS operations into the NAS.

A. Authority for This Rulemaking

This rulemaking is promulgated under the authority described in the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). Section 333 of Public Law 112–95 directs the Secretary of Transportation[6] to determine whether "certain unmanned aircraft systems may operate safely in the national airspace system." If the Secretary determines, pursuant to section 333, that certain unmanned aircraft systems may operate safely in the national airspace system, then the Secretary must "establish requirements for the safe operation of such aircraft systems in the national airspace system." [7]

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[4] To become certificated as remote pilot with a small UAS rating, an individual is only required to pass a knowledge test. The certification does not require an individual to attend ground school or to pass a practical skills exam, both of which are required to receive an airman's certificate for sport pilot and above.

[5] See the full regulatory evaluation for a detailed description on the two small UAS forecasts the FAA used to estimate benefits and costs.

[6] The primary authority for this rulemaking is based on section 333 of Public Law 112–95 (Feb. 14, 2012). In addition, this rulemaking also relies on FAA statutory authorities. Thus, for the purposes of this rulemaking, the terms "FAA," "the agency," "DOT," "the Department," and "the Secretary" are used synonymously throughout this document.

This rulemaking is also promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which charge the FAA with issuing regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges the FAA with prescribing regulations that the FAA finds necessary for safety in air commerce and national security. This rulemaking also establishes a new class of airman certificate tailored to remote pilots, consistent with the statutory obligation set forth in 49 U.S.C. 44703.

The model-aircraft component of this rulemaking incorporates the statutory mandate in section 336(b) that preserves the FAA's authority, under 49 U.S.C. 40103(b) and 44701(a)(5), to pursue enforcement "against persons operating model aircraft who endanger the safety of the national airspace system."

B. Analysis of Public Risk Posed by Small UAS Operations

Small UAS operations pose risk considerations that are different from the risk considerations typically associated with manned-aircraft operations. On one hand, certain operations of a small unmanned aircraft, discussed more fully in section III.E of this preamble, have the potential to pose significantly less risk to persons and property than comparable operations of a manned aircraft due to differences in the weight of the aircraft. The typical total takeoff weight of a general aviation aircraft is between 1,300 and 6,000 pounds as compared to a total takeoff weight of a small unmanned aircraft of less than 55 pounds. Consequently, because of the reduced weight, the small unmanned aircraft would pose significantly less risk to persons and property on the ground in the event of a mishap or pilot error. As such, a small UAS operation whose parameters are well defined to mitigate risk to other aircraft would also pose a smaller overall public risk or threat to national security than the operation of a manned aircraft.

On the other hand, even though small UAS operations have the potential to pose a lower level of public risk in certain types of operations, the unmanned nature of the small UAS operations raises two unique safety concerns that are not present in manned-aircraft operations. The first safety concern is whether the person operating the small unmanned aircraft, who is physically separated from that aircraft during flight, would have the ability to see manned aircraft in the air in time to prevent a mid-air collision with that manned aircraft. As discussed in more detail below, the FAA's regulations currently require each person operating an aircraft to maintain vigilance "so as to see and avoid other aircraft." [8] This is one of the fundamental principles for collision avoidance in the NAS.

For manned-aircraft operations, "see and avoid" is the responsibility of pilots on board an aircraft. Because the remote pilot in an unmanned aircraft operation is not physically on the unmanned aircraft, that remote pilot does not have the same visual perspective and ability to see other aircraft as a manned-aircraft pilot. Thus, the challenge for small unmanned aircraft operations is to ensure that the person operating the small unmanned aircraft is able to see and avoid other aircraft.

The second safety concern with small UAS operations is the possibility that, during flight, the person piloting the small unmanned aircraft may lose control of the aircraft due to a failure of the control link between the aircraft and the remote pilot's control station. This is known as a loss of positive control and may result from a system failure or because the aircraft has been flown beyond the signal range or in an area where control link communication between the aircraft and the control station is interrupted. A small unmanned aircraft whose flight is unable to be directly controlled could pose a significant risk to persons, property, or other aircraft.

C. Current Statutory and Regulatory Structure Governing Small UAS

Due to the lack of an onboard pilot, small UAS operations cannot be conducted in accordance with many of the FAA's current operating regulations, codified in 14 CFR part 91, that apply to general aviation. The primary example of this conflict is § 91.113(b), which requires each person operating an aircraft to maintain vigilance "so as to see and avoid other aircraft." The FAA created this requirement in a 1968 rulemaking,[9] which combined two previous aviation regulatory provisions (Civil Air Regulations (CAR) §§ 60.13(c) and 60.30) into the "see and avoid" requirement now found in § 91.113(b). These CAR provisions were intended to address aircraft collision-awareness problems by requiring a pilot on board the aircraft to look out of the aircraft during flight to observe whether other aircraft are on a collision path with his or her aircraft. Those provisions did not contemplate the use of technology to substitute for the human vision of a pilot on board the aircraft nor did they contemplate the manipulation of the aircraft from outside of the aircraft. To the contrary, CAR § 60.13(c) stated that one of the problems it intended to address was "preoccupation by the pilot with cockpit duties," which indicates that the regulation contemplated the presence of a pilot on board the aircraft.

Based on this intent, § 91.113(b) requires an aircraft pilot to have the perspective of being inside the aircraft as that aircraft is moving in order to see and avoid other aircraft. Since the remote pilot of a small UAS does not have this perspective, operation of a small UAS cannot meet the see and avoid requirement of § 91.113(b).

In addition to regulatory considerations, there are statutory considerations that apply to small UAS operations. For example, even though a small UAS is different from a manned aircraft, the operation of a small UAS still involves the operation of an aircraft under the FAA's statute, which defines an "aircraft" as "any contrivance invented, used, or designed to navigate or fly in the air." 49 U.S.C. 40102(a)(6). Congress reaffirmed that an unmanned aircraft is an aircraft in the FAA Modernization and Reform Act of 2012, by defining unmanned aircraft as "an aircraft that is operated without the possibility of direct human intervention from within or on the aircraft." Sec. 331(8), Public Law 112–95. In *Administrator* v. *Pirker*, the National Transportation Safety Board (NTSB) unanimously affirmed this understanding, finding that an unmanned aircraft is an aircraft for purposes of the FAA's statutes and regulations.[10]

Because a small UAS involves the operation of an "aircraft," this triggers the FAA's registration and certification statutory requirements. Specifically, subject to certain exceptions, a person may not operate a civil aircraft that is not registered. 49 U.S.C. 44101(a). In addition, a person may not operate a civil aircraft in air commerce without an airworthiness certificate. 49 U.S.C. 44711(a)(1). Finally, a person may not serve in any capacity as an airman on a civil aircraft being operated in air commerce without an airman certificate. 49 U.S.C. 44711(a)(2)(A).[11]

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[7] Public Law 112–95, sec. 333(c).

[8] 14 CFR 91.113(b).

[9] *Pilot Vigilance,* 33 FR 10505 (July 24, 1968).

[10] *Administrator* v. *Pirker,* NTSB Order No. EA–5730 (Nov. 17, 2014). A copy of the *Pirker* opinion may be found at: *http://www.ntsb.gov/legal/alj/Documents/5730.pdf.*

The term "air commerce," as used in the FAA's statutes, is defined broadly to include "the operation of aircraft within the limits of a Federal airway, or the operation of aircraft that directly affects, or may endanger safety in foreign or interstate air commerce." 49 U.S.C. 40102(a)(3). Because of this broad definition, the NTSB has held that "any use of an aircraft, for purpose of flight, constitutes air commerce." [12] Courts that have considered this issue have reached similar conclusions that "air commerce," as defined in the FAA's statute, encompasses a broad range of commercial and non-commercial aircraft operations.[13]

Accordingly, because "air commerce" encompasses such a broad range of aircraft operations, a civil small unmanned aircraft cannot currently be operated, for purposes of flight, if it does not comply with the above statutes. However, the FAA's current processes for issuing airworthiness and airman certificates were designed to be used for manned aircraft and do not take into account the considerations associated with civil small UAS.

Because the pertinent existing regulations do not differentiate between manned and unmanned aircraft, a small UAS is currently subject to the same airworthiness certification process as a manned aircraft. These existing regulations do not contemplate small UAS operations that could, as a result of their operational parameters, safely be conducted without any airworthiness certification. This framework imposes an undue burden on such operations.

Additionally, under current pilot certification regulations, depending on the type of operation, the remote pilot in command of the small UAS currently must obtain a sport, recreation, private, commercial, or airline transport pilot certificate. While a private pilot and commercial pilot may both operate an aircraft for the furtherance of a business, a private pilot may only do so if the flight is incidental to the pilot's business or employment and not for compensation or hire. Only a commercial or airline transport pilot certificate may be used to operate an aircraft for compensation or hire.[14]

Typically, to obtain a sport, private, recreational, commercial, or airline transport pilot certificate, the small UAS pilot currently has to: (1) Receive training in specific aeronautical knowledge areas; (2) receive training from an authorized instructor on specific areas of aircraft operation; and (3) pass an aeronautical knowledge test and a practical (skills) test. A certificate applicant also has to obtain minimum hours of flight time prior to applying for the certificate: (1) 20 hours for a sport pilot certificate; (2) 30 hours for a recreational pilot certificate; (3) 40 hours for a private pilot certificate; (4) 250 hours for a commercial pilot certificate; and (5) 1,500 hours for an airline transport pilot certificate. Finally, the certificate applicant has to establish his or her physical capability by: (1) Holding a valid and effective driver's license (for a sport pilot certificate); (2) obtaining a third-class airman medical certificate (for a recreational or private pilot certificate); (3) obtaining a second-class airman medical certificate (for a commercial pilot certificate or to exercise second-in-command privileges of an airline transport pilot certificate); or (4) obtaining a first-class airman medical certificate (to exercise pilot-in-command privileges of an airline transport pilot certificate).

While these airman certification requirements are necessary for manned aircraft operations, they impose an unnecessary burden for many small UAS pilots because a person obtains a pilot certificate under part 61 by learning how to operate a manned aircraft. Much of that aeronautical experience/flight training is not applicable to small UAS operations because a small UAS is operated differently than a manned aircraft. In addition, the aeronautical/flight experience currently necessary to obtain a pilot certificate under part 61 does not equip the certificate holder with all of the tools necessary to safely pilot a small UAS. Specifically, applicants for a pilot certificate under part 61 currently are not trained in how to deal with those aspects of "see-and-avoid" and loss-of-positive-control safety issues that are unique to small unmanned aircraft. Thus, requiring persons wishing to operate a small UAS to obtain a pilot certificate under part 61 imposes the cost of airman certification on those persons, but does not result in a significant safety benefit because the process of obtaining the certificate does not equip those persons with all of the tools necessary to mitigate the public risk posed by small UAS operations.

D. Integrating Small UAS Operations into the NAS through Rulemaking

To address the issues discussed above, the Department has been engaged in a rulemaking to integrate small UAS into the NAS.[15]

In 2012, Congress passed the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95). In section 332(b) of Public Law 112–95, Congress directed the Secretary to issue a final rule on small unmanned aircraft systems that will allow for civil operations of such systems in the NAS.[16] In section 333 of Public Law 112–95, Congress also directed the Secretary to determine whether "certain unmanned aircraft systems may operate safely in the national airspace system." To make a determination under section 333, the Secretary of Transportation must assess "which types of unmanned aircraft systems, if any, as a result of their size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight do not create a hazard to users of the national airspace system or the public or pose a threat to national security." Public Law 112–95, Sec. 333(b)(1). The Secretary must also determine whether a certificate of waiver or authorization, or airworthiness certification is necessary to mitigate the public risk posed by the unmanned aircraft systems that are under consideration. Public Law 112–95, Sec. 333(b)(2). If the Secretary determines that certain unmanned aircraft systems may operate safely in the NAS, then the Secretary must "establish requirements for the safe operation of such aircraft systems in the national airspace system." Public Law 112–95, Sec. 333(c). The flexibility provided for in section 333 did not extend to airman certification and security vetting, aircraft marking, or registration requirements.

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[11] The statutes also impose other requirements that are beyond the scope of this rulemaking. For example, 49 U.S.C. 44711(a)(4) prohibits a person from operating as an air carrier without an air-carrier operating certificate.

[12] *Administrator* v. *Barrows,* 7 N.T.S.B. 5, 8–9 (1990).

[13] *See, e.g., United States* v. *Healy,* 376 U.S. 75, 84 (1964) (holding that the statutory definition of "air commerce" in the Federal Aviation Act is not limited to commercial airplanes); *Hill* v. *NTSB,* 886 F.2d 1275, 1280 (10th Cir. 1989) ("[t]he statutory definition of 'air commerce' is therefore clearly not restricted to interstate flights occurring in controlled or navigable airspace"); *United States* v. *Drumm,* 55 F. Supp. 151, 155 (D. Nev. 1944) (upholding amendments of Civil Air Regulations, which among other things prohibited any person from piloting a civil aircraft unless the person held a valid pilot certificate and the aircraft possessed an airworthiness certificate, on the grounds that the regulatory action was within the scope of powers conferred by Congress).

[14] *See* 14 CFR 61.113, 61.133 and 61.167(a).

[15] The FAA chartered the small UAS Aviation Rulemaking Committee (ARC), which provided it with recommendations on how small UAS could be safely integrated into the NAS. A copy of the ARC Report and Recommendations can be found in the docket for this rulemaking.

[16] As discussed in more detail further in the preamble, the FAA Modernization and Reform Act of 2012 also contained a provision prohibiting the FAA from issuing rules and regulations for model aircraft meeting certain criteria specified in section 336 of the Act.

As discussed previously, the FAA's statute normally requires an aircraft being flown outdoors to possess an airworthiness certificate.[17] However, subsection 333(b)(2) allows for the determination that airworthiness certification is not necessary for certain small UAS. The key determinations that must be made in order for UAS to operate under the authority of section 333 are: (1) The operation must not create a hazard to users of the national airspace system or the public; and (2) the operation must not pose a threat to national security.[18] In making these determinations, the Secretary of Transportation must consider the following factors: size, weight, speed, operational capability, proximity to airports and populated areas, and operation within visual line of sight.

In 2013, the Department issued a comprehensive plan and subsequently the FAA issued a roadmap of its efforts to achieve safe integration of UAS operations into the NAS.[19] As a result of its ongoing integration efforts, the FAA seeks to change its regulations to take the first step in the process of integrating small UAS operations into the NAS. The NPRM proposed to utilize the airworthiness-certification flexibility provided by Congress in section 333 of Public Law 112–95, and allow some small UAS operations to commence in the NAS.[20] As noted earlier in this executive summary, the FAA published the NPRM on February 23, 2015, and received over 4,600 comments. The NPRM proposed to issue small UAS airman certificates to applicants who passed a knowledge test, and proposed to allow line-of-sight operations of small unmanned aircraft below 500 feet AGL at speeds of less than 100 miles per hour. Airworthiness certification would not be required under the proposed rule. The FAA has considered the public comments filed in response to the NPRM, and now issues this final rule.

E. Related UAS Integration Initiatives

While this rulemaking was pending, the FAA recognized that there already exists a population of small UAS operators and remote pilots who are ready and able to operate safely. To address the needs of these operators and remote pilots while these regulations were being finalized, the Department issued thousands of exemptions under its section 333 authority to permit civil visual-line-of-sight small UAS operations in the NAS.[21] The operations permitted under those exemptions are similar to those that will be enabled by part 107.

In addition, to further facilitate the integration of UAS into the NAS, the FAA has chosen six UAS research and test site operators across the country. In selecting the six test site operators, the FAA considered geography, climate, location of ground infrastructure, research needs, airspace use, safety, aviation experience, and risk. In totality, these six test site applications achieve cross-country geographic and climatic diversity and help the FAA meet its UAS research needs. As of December 2015, all of the UAS test sites are operational and are gathering operational data to foster further integration, as well as evaluating new technologies. The FAA has also selected, after a rigorous competition, a Mississippi State University team as the FAA's Center of Excellence for Unmanned Aircraft Systems. The Center of Excellence will focus on research, education, and training in areas critical to safe and successful integration of UAS into the NAS.[22]

In May 2015, the FAA announced the UAS Focus Area Pathfinders initiative,[23] a partnership with industry to explore the next steps in unmanned aircraft operations beyond the type of operations the agency proposed in the small UAS NPRM. Three companies reached out to the FAA to work on research to continue expanding use of UAS in the nation's airspace in three focus areas: Visual line-of-sight operations in urban areas; extended visual-line-of-sight operations in rural areas; and beyond visual line-of-sight in rural/isolated areas. In October 2015 a fourth Pathfinder initiative was added, testing technology to identify small UAS operating around airports.

In September 2015, the FAA issued Advisory Circular 91–57A,[24] *Model Aircraft Operating Standards*, replacing and superseding the guidance provided in the now-cancelled Advisory Circular 91–57, issued in 1981. The updated document provides guidance to persons operating unmanned aircraft for hobby or recreation purposes meeting the statutory definition of "model aircraft" contained in Section 336 of the FAA Modernization and Reform Act (Public Law 112–95), and describes means by which model aircraft may be operated safely in the NAS.

In February 2016, the FAA convened an aviation rulemaking committee (ARC) to provide recommendations for a performance-based standard that would allow certain UAS to be operated over people. Previously characterized as micro UAS in the NPRM for this final rule, this category of operations will now be considered in a separate rulemaking. The ARC submitted its recommendations to the FAA on April 2, 2016, and the FAA is currently evaluating the recommendations. A copy of the ARC's report is available in docket for this rulemaking, and more information regarding the status of this new rulemaking may be found in the Department's significant rulemakings report, available at *www.transportation.gov/regulations.*

III. Discussion of the Final Rule

As discussed in the previous section, in order to determine whether certain UAS may operate safely in the NAS pursuant to section 333, the Secretary must find that the operation of the UAS will not: (1) Create a hazard to users of the NAS or the public; or (2) pose a threat to national security. The Secretary must also determine whether small UAS operations subject to this rule pose a safety risk sufficient to require airworthiness certification. The following preamble sections discuss the specific components of this rule, and section III.J explains how these components work together and allow the Secretary to make the statutory findings required by section 333.

A. Incremental Approach and Waiver

In the NPRM, the FAA noted that this rulemaking is one step of a broader process to fully integrate UAS into the NAS. "Once the entire integration process is complete, the FAA envisions the NAS populated with UAS that operate well beyond the operational limits proposed in [the NPRM]." [25] However, because higher-risk UAS operations pose additional safety issues that require more time to resolve, the FAA proposed to limit this rulemaking to small UAS operations posing the least amount of risk so that the agency could move to quickly issue a final rule integrating those operations into the NAS. "In the meantime, the FAA will continue working on integrating UAS operations that pose greater amounts of risk, and will issue notices of proposed rulemaking for those operations once the pertinent issues have been addressed, consistent with the approach set forth in the UAS Comprehensive Plan for Integration and FAA roadmap for integration.[26]

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[17] 49 U.S.C. 44711(a)(1).

[18] Public Law 112–95, sec. 333(b)(1).

[19] *http://www.faa.gov/uas/media/uas_roadmap_2013.pdf.*

[20] As discussed in section III.C.4 below, 14 CFR part 107 will not apply to model aircraft that satisfy all of the statutory criteria specified in section 336 of Public Law 112–95. The FAA has recently published an interpretive rule for public comment explaining the statutory criteria of § 336. See Interpretation of the Special Rule for Model Aircraft, 79 FR 36172, 36175 (June 25, 2014).

[21] *http://www.faa.gov/uas/legislative_programs/section_333/.*

[22] *http://www.faa.gov/uas/legislative_programs/coe/.*

[23] *http://www.faa.gov/uas/legislative_programs/pathfinders/.*

[24] *https://www.faa.gov/documentLibrary/media/Advisory_Circular/AC_91-57A.pdf.*

The FAA also acknowledged that new technologies could come into existence after this rule is issued that could alleviate some of the risk concerns underlying the provisions of this rulemaking. As such, the FAA invited comment as to whether the final rule should include some type of waiver authority (such as a letter of deviation or a waiver) to better accommodate these new technologies. For the reasons discussed below, the FAA has decided to proceed with an incremental approach in this final rule but has added waiver authority to the regulatory text in order to accommodate new technologies and unique operational circumstances.

A number of commenters, including NTSB, Airlines for America (A4A), and the Small UAV Coalition, supported the FAA's proposed incremental approach to issue a final rule immediately integrating low-risk UAS operations into the NAS while continuing to work on integrating UAS posing a higher risk in separate regulatory actions. Qualcomm Incorporated, Google, Inc., the Oregon Department of Aviation, and the North Dakota Department of Agriculture urged the FAA to move quickly to issue a final rule integrating small UAS operations into the NAS. Google emphasized that "[a]s the [small UAS] industry evolves, any lengthy delay in the issuance of a final [small UAS] rule would substantially reduce the benefits of the final rule. It will be difficult, if not impossible, for the FAA to adequately consider the many likely technological developments during a protracted rulemaking." The National Association of Flight Instructors added that because UAS are a relatively new technology whose risks are still being studied, the FAA should use "a phased in set of regulations that ease into basic use of [small UAS] in the NAS with close attention to the degree of responsible use and compliance with regulations before considering relaxation of rules to allow increasing capability of the aircraft."

The Coalition of Airline Pilots Associations (CAPA) commented that "creating a set of regulations and standards that have a lower level of safety in the name of expedience is problematic." CAPA asserted that this rulemaking "is an opportunity to develop a regulatory schema, using the hard lessons learned over the past one hundred years that has the long-range vision to be capable and integrated to handle the full spectrum of anticipated operations." CAPA also claimed that there may ultimately be remotely piloted vehicles that are the size of commercial transport category aircraft, and that any system put in place to govern UAS must account for this eventuality and provide the appropriate level of regulation. The Flight School Association of North America recommended a 12 to 18-month extension to the rulemaking timeline, "so that more review can be accomplished."

Other commenters, including Amazon.com, Inc. (Amazon), the American Farm Bureau Federation, and several state farm bureaus,[27] raised concerns about the proposed incremental approach. These and other commenters, such as the U.S. Small Business Administration (SBA) Office of Advocacy and the George Washington University Regulatory Studies Center, argued that more flexibility is necessary in the final rule to keep pace with new and emerging technologies. In addition, the commenters asserted that by delaying the integration of certain operations, such as beyond-visual-line-of-sight operations, until a future rulemaking, the FAA would also delay the benefits associated with those operations until the pertinent future rulemaking is complete. The George Washington University Regulatory Studies Center suggested that the FAA set regular deadlines for issuing future final rules to further integrate UAS into the NAS.

To address these concerns, a number of commenters including the SBA Office of Advocacy, the National Business Aviation Association (NBAA), and Google, urged the FAA to include deviation authority in the final rule. Google suggested that the FAA should grant a deviation from the provisions of part 107 if an applicant can establish that his or her small UAS operation would provide a level of safety equivalent to the one provided by the operating parameters of part 107. Several commenters including the National Ski Areas Association, EEI,[28] and the American Farm Bureau Federation (AFBF) asserted that there exist industries (such as agriculture, electrical utilities, and ski resorts) whose unique operating environments may allow them to mitigate some of the safety concerns underlying the operational parameters of the NPRM proposal. The Small UAV Coalition emphasized that the key to including deviation authority in the final rule would be for the FAA to establish a process by which it may authorize certain operations to exceed the other provisions of part 107 based on case-specific characteristics such as the operational circumstances of the mission, technological capabilities of the small UAS, and the training and experience of the operator.

After considering the comments, the FAA has decided to proceed incrementally and issue a final rule that immediately integrates the lowest-risk small UAS operations into the NAS. As Qualcomm, Google, the Oregon Department of Aviation, and other commenters pointed out, delaying the integration of the lowest-risk small UAS operations until issues associated with higher-risk operations have been addressed would needlessly delay the realization of societal benefits associated with integrating UAS operations for which the pertinent safety issues have been addressed. In addition, the immediate integration of the lowest-risk small UAS operations into the NAS would provide the FAA with additional operational experience and data that could be used to assist with the integration of higher-risk operations.

However, the FAA also agrees with the SBA Office of Advocacy and other commenters who pointed out that: (1) The rulemaking process for higher-risk

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[25] 80 FR at 9552.

[26] 80 FR at 9552. Section 332(a) of Public Law 112–95 requires the Secretary of Transportation to develop a comprehensive plan to safely accelerate the integration of civil UAS into the NAS. This plan must be developed in consultation with representatives of the aviation industry, Federal agencies that employ UAS technology in the NAS, and the UAS industry. Section 332(a) also requires the Secretary of Transportation to develop a 5-year roadmap for the introduction of civil UAS into the NAS. Both the comprehensive plan and the roadmap were published in November 2013.

[27] Some of these commenters include the Michigan Farm Bureau, the Indiana Farm Bureau, the Louisiana Farm Bureau Federation, and the South Dakota Farm Bureau Federation.

[28] EEI, NRECA, and APPA submitted a joint comment to the docket. For ease of reference, this preamble will refer to the joint submission simply by the name of the first organization on the letterhead, which is EEI.

UAS operations may lag behind new and emerging technologies; and (2) certain individual operating environments may provide unique mitigations for some of the safety concerns underlying this rule. To resolve these issues, this rule will, in § 107.200, include the option to apply for a certificate of waiver. This certificate of waiver will allow a small UAS operation to deviate from certain provisions of part 107 if the Administrator finds that the proposed operation can safely be conducted under the terms of that certificate of waiver. This is similar to the standard that the FAA utilizes to consider waivers to the requirements of 14 CFR part 91.[29] A discussion as to whether a provision of part 107 is waivable can be found in the preamble section discussing that provision.

To obtain a certificate of waiver, an applicant will have to submit a request containing a complete description of the proposed operation and a justification, including supporting data and documentation as necessary, that establishes that the proposed operation can safely be conducted under the terms of the requested certificate of waiver. The FAA expects that the amount of data and analysis required as part of the application will be proportional to the specific relief that is requested. Similarly, the FAA anticipates that the time required for it to make a determination regarding waiver requests will vary based on the complexity of the request. For example, a request for a major deviation from part 107 for an operation that takes place in a congested metropolitan area with heavy air traffic will likely require significantly more data and analysis than a request for a minor deviation for an operation that takes place in a sparsely populated area with minimal air traffic. If a certificate of waiver is granted, that certificate may include additional conditions and limitations designed to ensure that the small UAS operation can be conducted safely.

The certificate-of-waiver process will allow the FAA to assess case-specific information concerning a small UAS operation that takes place in a unique operating environment and consider allowing additional operating flexibility that recognizes safety mitigations provided by the specific operating environment. The FAA anticipates that this process will also serve as a bridging mechanism for new and emerging technologies; allowing the FAA to permit testing and use of those technologies, as appropriate, before the pertinent future rulemaking is complete.

Like information collected from § 333 exemptions, the FAA plans to collect useful data derived from waiver application and issuance such as what part 107 provisions have the greatest number of waiver requests, what technology is being utilized to enhance safety, and what safe operating practices are most effective. To evaluate the effectiveness of operating practices, the FAA plans to compare the mitigations imposed by waiver grants against accident and incident reports and observations made as part of the FAA's oversight. For example, an FAA inspector conducting an inspection of a small UAS that is operating under a waiver will be able to observe potential safety issues that may arise during the operation. This information will used to assess risk and be shared with various organizations in the FAA to inform policy decisions and rulemaking efforts.

Some commenters requested authorization to deviate for specific activities. For example, the National Rural Electric Cooperative Association (NRECA) requested deviation authority for utility maintenance and operations of UAS in electric cooperative power line right-of-way corridors. The American Petroleum Institute (API) requested deviation authority in circumstances in which environmental protection and health and human safety issues are implicated. Princeton University recommended that the rule include an option for universities to certify that the aircraft is to be used for educational purposes and poses no unreasonable danger to the public. Vail Resorts requested that the FAA provide a vehicle for deviation authority through agency practices that will enable ski areas to obtain authorization or exemption from certain final rules.

The FAA notes that the safety of a small UAS operation is a result of that operation's operating parameters and not the purpose for which the operation is conducted. For example, if a small UAS operation is conducted at a remote ski resort, the safety-pertinent factor is not that the operation is conducted for ski-area purposes, but that the operation is conducted in a remote area. However, at this time, the FAA does not have sufficient data to determine what (if any) operational mitigations are included when a small UAS operation is conducted in a given industry and how widespread those mitigations are within the industry. To take the earlier example of ski areas, the FAA does not have sufficient data to determine whether all ski areas are remotely located and the density of manned-aircraft traffic near each ski area. Accordingly, the FAA will evaluate operations seeking to go beyond the baseline part 107 requirements on a case-by-case basis as part of its evaluation of the waiver applications.

Modovolate Aviation and Colorado Ski Country USA encouraged the FAA to make available class exemptions under section 333 of Public Law 112–95 if specific classes of small UAS cannot reasonably be accommodated within the final rule. Similarly, DJI recommended that, where technology or operating practice is widely available or known, the FAA could issue guidance allowing its inspectors to routinely grant deviation authority to all operators meeting certain standards rather than evaluating individual requests for deviation. Another commenter encouraged the FAA to consider issuing equipment-specific authorizations or waivers based on specific technologies rather than granting authorizations or waivers to specific operators flying specific aircraft. An individual urged the FAA to set up a program to let manufacturers self-certify that their aircraft models qualify for exemption from applicable rules.

The FAA notes that the Administrative Procedure Act imposes certain requirements on agency rulemaking. When conducting a rulemaking, an agency must, among other things, issue a notice of proposed rulemaking, allow time for public comment, consider public comments, and issue a final rule after consideration of public comments.[30] As part of its process to integrate UAS into the NAS, the FAA may, in the future, consider categories of UAS and UAS operations, but absent changes to the statute, the method by which the agency will integrate those categories into the NAS will have to comply with the Administrative Procedure Act. With regard to manufacturer self-certification, the FAA notes that part 107 will not contain airworthiness certification requirements and thus, there will be no part 107 requirement to which a manufacturer could self-certify.[31]

NetMoby encouraged the FAA to circumscribe very specific rules establishing standards for UAS deviation authority at the outset of the

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[29] *See* 14 CFR 91.903(a) (allowing a certificate of waiver from part 91 requirements "if the Administrator finds that the proposed operation can be safely conducted under the terms of that certificate of waiver").

[30] *See* 5 U.S.C. 553(b) and (c).

[31] Part 107 does require the remote pilot to conduct a preflight check to ensure that the small UAS is in a condition for safe operation, but the manufacturer would be unable to self-certify for that requirement because a small UAS may become damaged after it leaves the manufacturer's possession.

UAS regulatory environment to avoid being immediately overwhelmed with waiver requests and other requests for deviation authority. Google proposed a specific process for the deviation authority. Google explained that the FAA would be able to tailor different operational restrictions, as appropriate, if a petitioner can demonstrate that: (i) The small UAS has enhanced safety technology; (ii) the small UAS meets a higher level of airworthiness or complies with a more detailed maintenance and inspection protocol; or (iii) the small UAS operator (pilot) has a higher level of pilot and small UAS operator qualification, training, and/or certification than the proposed part 107 would require.

As discussed earlier, the standard that an applicant seeking a waiver will be required to meet is to demonstrate that his or her proposed small UAS operation can safely be conducted under the terms of a certificate of waiver. This waiver process is intended to allow for case-specific mitigations that could take many different forms or combinations. These mitigations could even be based on technology that does not exist at this time. Because prescriptive requirements imposed on the waiver process as part of this rulemaking may limit the FAA's flexibility to consider new or unique operational circumstances and safety mitigations, the FAA declines to add more prescriptive requirements to this process.

The International Air Transport Association urged the FAA to adopt a final rule that allows for regular and systemic review to ensure the appropriate level of regulation or oversight. The Agricultural Retailers Association similarly recommended timely reauthorization of the rules "to mirror technological advances and risk mitigation." The Virginia Department of Aviation asserted that the rules "should be reviewed as quickly as the safety data permits," which the commenter estimated to be every 24 months "until we achieve full integration of the technology into the NAS."

Several commenters urged the FAA to specifically address the timeline for implementation, so that the industry can prepare appropriately. One individual questioned whether the FAA intends to create a forecast for UAS "rule evolution." Specifically, the commenter questioned when the FAA expects to develop rules for UAS greater than 55 pounds and what constraints the agency expects to put on operations for these larger vehicles. Another individual recommended the FAA set regular deadlines for issuing final rules to update UAS integration standards, and commit to removing some of the requirements (*e.g.*, size, visual line of sight) by a date certain, unless experience justified maintaining them.

The FAA notes that it has issued a comprehensive plan and roadmap laying out its long-term vision for UAS integration into the NAS. The FAA is currently updating these documents with an FAA strategic plan for UAS integration into the NAS.[32]

With regard to review of the rules once they are in place, the FAA notes that Executive Order 13610 requires the FAA to review its regulations to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the advent of new technologies. The FAA regularly conducts a retrospective review of its regulations, and the regulations of this rule will be no exception.

B. Discussion of the Applicable Statutory Framework

The Mercatus Center at George Mason University and the Competitive Enterprise Institute questioned the Department's reliance on Public Law 112–95, section 333 as the authority for the proposed rule. Both commenters stated that Public Law 112–95, § 332 includes Congress' mandate to the FAA to promulgate rules for small UAS integration into the NAS. The Competitive Enterprise Institute urged the Department to clearly articulate why it is invoking section 333 authority, as opposed to § 332(b) authority, as the basis for this rulemaking.

Section 332(b)(1) requires the Secretary to publish a final rule allowing for the civil operation of small UAS in the NAS "to the extent the systems do not meet the requirements for expedited authorization under section 333." Conversely, section 333(a) requires the Secretary to determine whether certain UAS may operate safely in the NAS "before completion of the plan and rulemaking required by section 332. . . ." As part of the consideration under section 333, section 333(b)(2) directs the Secretary to determine whether ". . . airworthiness certification under section 44704 of title 49, United States Code is required for the operation of unmanned aircraft systems." If the Secretary determines that certain UAS may operate safely in the NAS, then section 333(c) requires the Secretary to "establish requirements for the safe operation" of those UAS in the NAS.

Because the statutory text of section 332(b)(1) applies only to those UAS that do not meet the requirements of section 333, sections 332 and 333 cannot both apply to the same UAS. The Department is pursuing this rulemaking under section 333 because section 333(b)(2) allows it to find that airworthiness certification is not necessary for small UAS that will be subject to this rule. As discussed in section III.J.3 of this preamble, the Department has indeed found that mandatory airworthiness certification is unnecessary to ensure the safety or security of these types of small UAS operations. However, unlike section 333(b)(2), section 332 does not contain a provision that would allow the Department to find that airworthiness certification should not be required for a small UAS. Because airworthiness certification is normally a statutory requirement imposed by 49 U.S.C. 44704 and 44711(a)(1), the FAA would have to include an airworthiness certification requirement in this rule if it were to conduct this rulemaking under section 332 rather than section 333. This would impose an additional requirement on small UAS whose operational parameters do not pose a hazard to users of the NAS or a threat to national security.

Matternet, Inc. argued that Public Law 112–95 compels the FAA to develop a regulatory framework for unmanned aircraft systems, but does not bind or limit the Agency to existing statutes concerning aviation, or to decades-long aviation regulatory doctrines that, Matternet asserted, do not apply to these new technologies. Furthermore, Matternet argued that because Public Law 112–95, section 333 expressly contemplates that "certain unmanned aircraft systems [would] operate safely in the NAS before completion of the plan and rulemaking required by section 332," Congress gave the FAA a "blank slate" to create small UAS regulations "without any suggestion that existing statutes or regulations would act as impediments to the rulemaking process." Matternet also stated that it "is concerned that the FAA's proposal is impeded by an apparent notion that statutes, regulations or doctrines that were created decades ago to address manned aircraft operations are mandated to apply to unmanned aircraft, without any safety or economic rationale."

Matternet's argument that existing statutes and regulatory doctrines are limited to manned aircraft operations is foreclosed by precedent. In

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[32] *http://www.faa.gov/uas/publications/.*

Administrator v. *Pirker*,[33] the NTSB considered the issue of whether an unmanned aircraft is an "aircraft" within the meaning of FAA statutes and regulations and whether it is subject to the existing FAA regulations of part 91, which "prescribes rules governing the operation of aircraft." [34] The NTSB found that the statutory and regulatory definitions of aircraft are "clear on their face" and "draw no distinction between whether a device is manned or unmanned." [35] Thus, the NTSB concluded that the existing regulatory provision of § 91.13 (which prohibits careless or reckless operation of an aircraft) apply to the unmanned aircraft operation that was at issue in *Pirker*.[36]

The FAA is also unpersuaded by Matternet's other argument that Public Law 112–95 overturned all existing aviation statutes and regulations, leaving the FAA with a "blank slate" for this rulemaking. The Supreme Court has held that "[w]hile a later enacted statute . . . can sometimes operate to amend or even repeal an earlier statutory provision . . . repeals by implication are not favored and will not be presumed unless the intention of the legislature to repeal [is] clear and manifest." [37] The Court added that "[w]e will not infer a statutory repeal "unless the later statute expressly contradict[s] the original act or unless such a construction is absolutely necessary in order that the words of the later statute shall have any meaning at all." [38] Implied repeals of a longstanding statutory provision are particularly disfavored.[39]

The aviation statutes at issue here were enacted in 1958 as part of the Federal Aviation Act of 1958 (which created the Federal Aviation Agency).[40] Because these statutory provisions have been in place for 58 years, they are longstanding statutory provisions whose implied repeal would be particularly disfavored. Many of the pertinent regulatory provisions at issue in this rulemaking are similarly longstanding. For example, the "see and avoid" requirement of § 91.113(b) was created in 1968.[41] Thus, for the reasons discussed below, the FAA finds that, with the exception of 49 U.S.C. 44704 and 44711(a)(1), Public Law 112–95 did not repeal these existing statutes and regulations.

Section 333 of Public Law 112–95 directs the Secretary of Transportation to determine whether certain UAS may operate safely in the NAS and if so, to establish requirements for the safe operation of such UAS in the NAS.[42] With the exception of section 333(b)(2), which allows the Secretary to determine whether the airworthiness-certification requirements of 49 U.S.C. 44704 and 44711(a)(1) should be imposed on certain UAS, section 333 does not expressly contradict any existing statute or regulation. Furthermore, interpreting section 333 as repealing all prior aviation statutes and regulations is unnecessary in order to give meaning to section 333, which simply directs the Secretary to determine whether existing aircraft regulations prohibit or otherwise burden certain UAS operations that could operate safely in the NAS. If the Secretary determines that this is the case, then section 333(c) directs the Secretary to make the appropriate changes to the pertinent regulations. Because, with the exception of section 333(b)(2), section 333 can be given meaning without repealing other existing aviation statutes or regulations, we decline Matternet's suggestion that section 333 impliedly repeals those statutes or regulations.

We also note that section 333(b)(2) provides further evidence that Congress intended section 333 to work in conjunction with the existing aviation statutes. This subsection provides the Secretary with discretion to determine whether airworthiness certification is necessary for UAS subject to this rule. The FAA normally does not possess this discretion because 49 U.S.C. 44711(a)(1) requires airworthiness certification for any civil aircraft that is operated in air commerce. Subsection 333(b)(2) also expressly cross-references 49 U.S.C. 44704, which specifies the process by which the FAA may issue an airworthiness certificate. If Congress had intended section 333 to repeal all other aviation statutes and regulations, there would be no need to cross-reference § 44704 or explicitly give the Secretary the power to determine whether airworthiness certification should be required because a repeal of § 44711(a)(1) and § 44704 would automatically remove the statutory constraints on FAA's airworthiness certification discretion. Thus, interpreting section 333 as repealing all other aviation statutes would also render meaningless the Congressional directive in section 333(b)(2) for the Secretary to determine whether the airworthiness certification requirements of §§ 44711(a)(1) and 44704 should be applied to UAS subject to this rule.

The North Dakota Department of Agriculture noted that the FAA has authority over the NAS and requested clarification on how UAS operations will operate in an interstate manner. In response, the FAA notes that, as the North Dakota Department of Agriculture pointed out, the FAA's authority extends over the entire national airspace system.[43] Thus, with the exception of operations discussed in section III.C of this preamble, the provisions of part 107 will apply to small UAS operations operating in any State or manner in the United States.

C. Applicability

To integrate small UAS operations into the NAS, this rule will create a new part in title 14 of the CFR: Part 107. The regulations of part 107, which are tailored to address the risks associated with small UAS operations, will apply to small UAS operations in place of certain existing FAA regulations that impede civil small UAS operations. Specifically, for small UAS operations, the requirements of part 107 will generally replace the airworthiness provisions of part 21, the airman certification provisions of part 61, the operating limitations of part 91, and the external load provisions of part 133.

However, part 107 will not apply to all small UAS operations. For the reasons discussed below, part 107 will not apply to: (1) Air carrier operations; (2) international operations; (3) public aircraft operations; (4) certain model aircraft; and (5) moored balloons, kites, amateur rockets, and unmanned free balloons. Additionally, part 107 will allow current holders of an exemption issued under section 333 of Public Law 112–95 to continue operating under the terms of their exemption rather than under part 107.

1. Transporting Property for Compensation (Air Carrier Operations)

The NPRM proposed to allow transportation of property provided it is not done for compensation. The reasoning for the limitation on accepting payment or compensation for such transport is that, in general, when someone is transporting persons or property by air for compensation, that person may be considered an "air carrier" by statute and would then be required to obtain OST economic authority and additional FAA safety authority.[44] Because the traveling and shipping public have certain expectations of safety and consumer protection when payment is exchanged for carriage, air carriers are subject to both economic and safety regulations to mitigate the risks to persons or non-operator-owned property on the aircraft, including statutory requirements for liability insurance coverage.

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[33] A copy of the *Pirker* decision can be found at: *http://www.ntsb.gov/legal/alj/OnODocuments/Aviation/5730.pdf.*

[34] 14 CFR 91.1(a).

[35] *Pirker* at 4–5.

[36] *Pirker* at 8–12.

[37] *Nat'l Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 662 (2007) (internal citations and punctuation marks omitted).

[38] *Id.*

[39] *Andrus* v. *Glover Constr. Co.*, 446 U.S. 608, 618 (1980) (noting "the axiom that repeals by implication of longstanding statutory provisions are not favored").

[40] Federal Aviation Act of 1958, Public Law 85–726, 72 Stat. 731 (1958).

[41] *Pilot Vigilance*, 33 FR 10505, July 24, 1968.

[42] Public Law 112–95, sec. 333(a) and (c).

[43] *See, e.g.*, Public Law 112–95, section 333(a) (directing the Secretary of Transportation to determine whether certain UAS may operate safely in the "*national* airspace system") (emphasis added).

The Department sought comment on whether the rule should go further—that is, whether UAS should be permitted to transport property for payment within the other proposed constraints of the rule, *e.g.*, the ban on flights over uninvolved persons, the requirements for line of sight, and the intent to limit operations to a confined area. The Department also sought comment on whether a special class or classes of air carrier certification should be developed for UAS operations.

Commenters including NAAA, International Brotherhood of Teamsters, and ALPA supported the proposed prohibition on carrying property for compensation. These commenters generally asserted that allowing air carrier operations at this time would be premature. NAAA stated that a more stringent regulatory regime, including certification of the safety of a small UAS for air carrier operations, should be developed before air carrier operations are permitted. The International Brotherhood of Teamsters stated that weakening the regulations before "package delivery technologies" are proven safe and reliable could endanger not only the public but also the warehouse and operational staff involved in the loading and maintenance of small UAS. ALPA stated that until there is a demonstrated safety record for UAS air carrier operations, the Department should not authorize such operations.

Other commenters, including FAST Robotics, NBAA, and Small UAV Coalition argued that the FAA should permit such operations. Life Drone argued that the final rule should allow small UAS to deliver "medical AED units" to emergency and remote locations where there is little or no risk of interference with the NAS. MAPPS requested a "geospatial exemption" to allow companies to obtain air carrier services for various geospatial sensors owned by those other than the small UAS operator.

The Small UAV Coalition, Matternet, and the Information Technology and Innovation Foundation opposed the prohibition on the basis that allowing a company to use a small UAS to transport property in furtherance of the company's own business, but not for compensation, is an arbitrary distinction. Matternet and the Small UAV Coalition argued that there is no safety or economic rationale to justify allowing property transport for business purposes but not for compensation. The Information Technology and Innovation Foundation asserted that the safety of goods transported by UAS does not depend on whether the UAS operator receives payment. This commenter further stated that "[the] goal should be to optimize both safety and commercial value when it comes to the integration of UAS into the NAS," but the prohibition on air carrier operations places "unnecessary restrictions on commercial activity."

Matternet noted that UAS analysis shows that over 80% of goods intended for delivery by UAS will be in the range of two kilograms or less, and that the total weight of the small UAS, including payload, will therefore be 6 kilograms or less. Thus, Matternet argued, the safety risks associated with manned air carrier operations—where the aircraft weighs considerably more and has significant fuel capacity, and where the operation could impact people both on the aircraft and on the ground—do not exist for unmanned air carrier operations. Google and the Consumer Electronics Association also pointed out that most UAS cargo delivery will consist of relatively low-weight items that create minimal safety concerns.

Google argued that UAS cargo operations are very similar to operations that require external payloads, such as sensors or cameras, and then noted that FAA has already authorized several small UAS operators to carry such external payloads. Amazon and American Farm Bureau Federation similarly noted that there are circumstances in which FAA already permits certain commercial operations (*e.g.*, aerial work operations, crop dusting, banner towing, ferry or training flights, and some transport of persons or property for compensation) without requiring an air carrier certificate, and a similar carve-out should be established for low-risk transport using small UAS.

Pointing to the low risks associated with the transport of property by small UAS under the operating limitations of the proposed rule, Amazon, Matternet, American Farm Bureau Federation, and Michigan Farm Bureau stated that an air carrier certification is not necessary for small UAS air carrier operations. If, however, the Department determines that some type of air carrier certification is required by statute, those four commenters, the Small UAV Coalition, and Continental Mapping suggested that the Department develop an alternative certification process that is tailored to small UAS operations.

NBAA and UPS stated that FAA can ensure safe operations by defining performance-based standards to enable transport of property for compensation. For example, UPS suggested weight limitations for small UAS involved in transporting property. AUVSI said risks could be mitigated by compliance with industry standards for design and build that would normally occur through the aircraft certification process. Aviation Management noted that small UAS should be permitted to transport property if they have received approval to do so—*i.e.*, through compliance with an advisory circular or with an industry standard for design and build, such as one developed by ASTM. The Consumer Electronics Association and Small UAV Coalition pointed out that companies that want to transport property by UAS for compensation have powerful business incentives to ensure safe, efficient, and complete operations.

Other commenters, including NetMoby, FAST Robotics, and Planehook Aviation Services, LLC (Planehook Aviation), said that a special class of air carrier certification should be required for UAS to transport property for payment. Planehook Aviation stated that, at a minimum, FAA should create a "common carriage certification" that mirrors the care and safety requirements for manned aviation under 14 CFR part 119.

The Department has reviewed the comments and legal authorities that govern the transport of property for compensation and has determined that it is appropriate to allow some limited operations involving the transport of property for compensation to be done under the other provisions of part 107, as analyzed below.

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[44] *See* 49 U.S.C. 41101 (noting that an air carrier may provide air transportation only if the air carrier holds a certificate issued under this chapter [chapter 411—Economic Regulation of Air Carrier Certificates] authorizing the air transportation), 49 U.S.C. 44705 (requiring the FAA Administrator to "issue an air carrier operating certificate to a person desiring to operate as an air carrier when the Administrator finds, after investigation, that the person properly and adequately is equipped and able to operate safely under this part and the regulations and standards prescribed under this part"), and 49 U.S.C. 44711(a)(4) (prohibiting a person from operating as an air carrier without an air carrier operating certificate). Air transportation is defined in 49 U.S.C. 40102(a)(5) as "foreign air transportation, interstate air transportation, or the transportation of mail by aircraft."

As noted earlier, in general when someone is transporting persons or property by air for compensation, that person may be considered an "air carrier" by statute and would then be required to obtain economic authority from the Office of the Secretary and additional FAA safety authority. Historically, the FAA has also required, through regulation, that certain commercial operators who may be transporting people or property for compensation wholly within a State, and thus not triggering the statutory requirements for air carriers, be certificated and comply with heightened safety requirements, based on the Administrator's authority in § 44701(a)(5) to prescribe regulations that are necessary for safety in air commerce. The rationale for this is that even aircraft operating wholly within a State could be operated in such a manner that directly affects, or may endanger safety in foreign or interstate air commerce.

In contrast, the FAA has also recognized that some commercial operations should not be subject to these heightened operator certification requirements and should be allowed to operate under the general operating rules of 14 CFR part 91. Some examples of this include student instruction, sightseeing flights conducted in hot air balloons, and non-stop flights conducted within a 25-statute mile radius of the airport of takeoff for the purpose of conducting parachute operations, as well as certain helicopter flights conducted within a 25-mile radius of the airport of takeoff.[45] These exceptions are narrow and well-defined, and must be conducted in accordance with operating limitations set forth in § 119.1(e) and 14 CFR part 91.

In light of our experience with certification of other commercial operations, and with particular attention to the safe integration of new technologies, applications that are emerging, and limited nature of the transportation that could occur given the operating limits of the final rule, the Department has determined that a similar exception from air carrier operations for unmanned aircraft involving limited transport of property for compensation is appropriate. As adopted, the final rule provides immediate flexibility for remote pilots to engage in the limited carriage of property by small UAS, provided that the operations are conducted within a confined area and in compliance with the operating restrictions of 14 CFR part 107. It does not, however, allow individuals or corporations, acting as "air carriers," to engage in "air transportation" as those terms are defined in 49 U.S.C. 40102.[46] As technology develops in the future, the Department will evaluate the integration of more expansive UAS air carrier operations into the NAS and will propose further economic and safety regulations if warranted.

In order to not be considered "air transportation," first, the transport must occur wholly within the bounds of a state. It may not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession, as this is defined by statute as interstate air transportation and would otherwise trigger the Department's statutory requirements for air carrier operations. Thus, remote pilots may not offer or conduct "air transportation," in which goods move across State or national borders. By statute and regulation, individuals seeking to carry more than a *de minimis* volume of property moving as part of a continuous journey over state, territorial, or international boundaries are considered by the Department of Transportation to be "air carriers" engaging in "air transportation."[47] The assessment of whether an operator is engaging in "air transportation" is specific to the facts and circumstances of each case. Generally, the Department looks to how the transportation is being marketed and offered to customers, whether the transporting entity has existing aviation economic authority, and the extent to which the people or goods are being transported as part of an inter- or multi-State network.

Second, as with other operations in part 107, small UAS operations involving the transport of property must be conducted within visual line of sight of the remote pilot. While the visual-line-of-sight limitation can be waived for some operations under the rule, the restriction is a critical component of the Department's finding that these part 107 operations do not warrant further safety or economic authority at this time. The visual-line-of-sight restriction limits the area of operation to a circle with only about a 1-mile radius around the remote pilot in command, depending on the visibility conditions at the time of the operation. This limited area of operation mitigates the safety concerns that underlie the additional requirements that the FAA normally imposes on commercial operators under part 119. Operating within visual line of sight of the remote pilot is also critical to the Department's finding that these operations are so limited such that at this time, they could not be considered air transportation, or part of a broader network of interstate commerce warranting economic authority to ensure adequate protection of consumers' interests at this time. Accordingly, any waivers that the FAA may grant to the visual-line-of-sight provisions of part 107 will not allow the operation to transport property for compensation or hire beyond visual line of sight.

For these reasons, this rule will also not allow the operation of a small UAS from a moving vehicle if the small unmanned aircraft is being used to transport property for compensation or hire. Allowing operation from a moving vehicle could allow the remote pilot in command to significantly expand the area of operation, raising the same safety and economic concerns as operations conducted beyond visual line of sight.

Third, the provisions of part 107 limit the maximum total weight of the small unmanned aircraft (including any property being transported) to under 55 pounds. This limits the size and weight of any property transported by the unmanned aircraft. Additionally, other provisions of the final rule require the remote pilot to know the unmanned aircraft's location; to determine the unmanned aircraft's attitude, altitude and direction; to yield the right of way to other aircraft; and to maintain the ability to see-and-avoid other aircraft. In the aggregate, the provisions of the final rule are designed to create an integrated framework and strike a balance that, on the one hand, allows limited transportation of property for compensation, but, on the other hand, ensures safety in the NAS and the opportunity to evaluate more expansive carriage of property that would require both OST economic authority and additional FAA safety authority.

Fourth, the FAA notes that the carriage of hazardous materials poses a higher level of risk than the carriage of other types of property. For example, in the context of external load operations conducted under 14 CFR part 133, the FAA has found, that "the transport of hazardous materials, especially forbidden [by PHMSA] hazardous materials, in external load operations creates a hazard to persons or property in the surface."[48] Because the carriage of hazardous materials poses a higher level of risk, part 107 will not allow the carriage of hazardous materials.

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[45] See 14 CFR 119.1(e)(1–10).

[46] *See* 49 U.S.C. 40102(a)(2) (defining "air carrier") and (a)(5) (defining "air transportation").

[47] *See* 49 U.S.C. 41101; 14 CFR 298.2.

Based on these operational limits, the Department at this time does not view the limited transport of property for compensation that could occur via a small UAS that is operated within visual line of sight of the remote pilot to constitute "interstate air transportation." The final rule, therefore, creates a new exception under 14 CFR part 119 for these operations authorized by part 107. This approach will encompass the vast majority of transportation by small UAS that could be conducted under part 107, including many of the specific scenarios suggested by commenters, without requiring the Department to design and develop a new infrastructure for issuance and administration of a new air carrier economic and safety licensing regime.

We note that while the operations permitted by this rule do not rise to the level of air transportation, they are still considered to be commercial operations. Thus as discussed in the next section, if a person does not satisfy U.S. citizenship requirements, he or she must seek authority under 14 CFR part 375 before conducting these operations.

2. International Operations and Foreign-Owned Aircraft

The International Civil Aviation Organization (ICAO) has recognized that UAS are aircraft, and as such, existing standards and recommended practices (SARPs) that apply to aircraft apply to UAS. ICAO currently is reviewing the existing SARPs to determine what modifications, if any, need to be made to accommodate UAS. In the U.S., however, UAS may operate with DOT authorization, under the authority of section 333[49] of Public Law 112–95, in a much less restrictive manner than current ICAO SARPs require. Thus, the FAA proposed to limit the applicability of part 107 to small UAS operations that are conducted entirely within the United States. Persons who wish to conduct operations outside of the United States would be able to do so, provided they seek and obtain the proper authorization from the requisite foreign civil aviation authority.

In addition, based on the ICAO framework and the current review that ICAO is conducting, the FAA proposed to limit the rule to operations of U.S.-registered UAS. Under 49 U.S.C. 44103 and 14 CFR 47.3, an aircraft can be registered in the United States only if it is not registered under the laws of a foreign country and meets one of the following ownership criteria:

- The aircraft is owned by a citizen of the United States;
- The aircraft is owned by a permanent resident of the United States;
- The aircraft is owned by a corporation that is not a citizen of the United States, but that is organized and doing business under U.S. Federal or State law and the aircraft is based and primarily used in the United States; or
- The aircraft is owned by the United States government or a State or local governmental entity.

In proposing this requirement, the FAA noted that existing U.S. international trade obligations, including the North American Free Trade Agreement (NAFTA), cover certain kinds of operations known as specialty air services. Specialty air services are generally defined as any specialized commercial operation using an aircraft whose primary purpose is not the transportation of goods or passengers, including but not limited to aerial mapping, aerial surveying, aerial photography, forest fire management, firefighting, aerial advertising, glider towing, parachute jumping, aerial construction, helilogging, aerial sightseeing, flight training, aerial inspection and surveillance, and aerial spraying services. The FAA invited comments on whether foreign-registered small unmanned aircraft should be permitted to operate under part 107, or recognized as specialty air services under international trade obligations.

With respect to limiting UAS operations under part 107 to operations within the United States, the National Agricultural Aviation Association (NAAA), DJI, and another commenter supported the limitation, but sought clarification and additional guidance material on what steps individuals may need to complete to obtain the proper authorization from foreign civil aviation authorities and the FAA to operate outside the United States.

Article 8 of the Chicago Convention specifies that no unmanned aircraft "shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization." Article 8 also calls on States to undertake "to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft." In accordance with this obligation, the provisions of part 107 set forth the necessary authorizations for operations conducted by U.S. citizens only within the United States. For those seeking to operate outside the United States, special authorization from the foreign civil aviation authority will be required. Thus, remote pilots wishing to conduct operations over another country's airspace should review that country's statutes, regulations, and guidance for clarification about how to operate in its airspace.

The Small UAV Coalition sought clarification regarding whether UAS operations over water and beyond 12 nautical miles from the U.S. coast could be conducted under part 107, provided the operations are within U.S. flight information regions and not over the territory of a contracting member state.

Until such time as agreements are reached with other countries, the FAA has determined that operations will be restricted to the land areas, internal waters, and territorial sea of the United States. U.S. flight information regions that are more than 12 nautical miles from the coast of the United States do not satisfy these criteria, and as such, part 107 will not apply to operations in those areas.

Planehook Aviation argued that the rule should be consistent with applicable articles of the Chicago Convention, which, as noted previously, deal with unmanned aircraft operations and the safe separation from manned civil aircraft operations.

As discussed earlier, ICAO has recognized that existing SARPs that apply to aircraft apply to UAS. ICAO currently is reviewing the existing SARPs to determine what modifications, if any, need to be made to accommodate UAS and in fact, recently amended the standard contained in paragraph 3.1.9 of Annex 2 (Rules of the Air). This standard requires that "[a] remotely piloted aircraft shall be operated in such a manner as to minimize hazards to persons, property or other aircraft and in accordance with the conditions specified in Appendix 4." That appendix sets forth detailed conditions ICAO Member States must require of civil UAS operations for the ICAO Member State to comply with the Annex 2, paragraph 3.1.9 standard.

Consistent with the recent amendment to 3.1.9 of Annex 2, the provisions of part 107 are designed to minimize hazards to persons, property or other aircraft operating within the

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[48] Memorandum to Christopher Bonanti from Rebecca MacPherson, Assistant Chief Counsel, AGC 200 (Aug. 17, 2009). PHMSA is the abbreviation for "Pipeline and Hazardous Materials Safety Administration."

[49] In addition to granting authorization through section 333 exemptions, the FAA may authorize UAS operations under sections 334 and 336 of Public Law 112–95, as well as through Experimental Airworthiness Certification of UAS and OPA (FAA Order 8130.34).

United States. Given the on-going evaluation of the SARPs by ICAO, this rule will, for the time being, limit the applicability of part 107 to small UAS operations that are conducted entirely within the United States. The FAA envisions that operations in international and foreign airspace will be dealt with in a future FAA rulemaking as ICAO continues to revise and more fully develop its framework for UAS operations to better reflect the diversity of UAS operations and types of UAS and to distinguish the appropriate levels of regulation in light of those differences.

Transport Canada stated that there is a discrepancy between the proposed rule's description of U.S. territorial waters extending to 12 nautical miles from the U.S. coast, and text in 14 CFR 91.1 that makes reference to "waters within 3 nautical miles of the U.S. Coast."

Under Presidential Proclamation 5928, the territorial sea of the United States, and consequently its territorial airspace, extends to 12 nautical miles from the baselines of the United States determined in accordance with international law. Thus, UAS operations that occur within 12 nautical miles from the baselines of the United States will be considered as operations occurring within the United States consistent with the applicability of part 107.

The FAA notes that this approach is consistent with part 91. While, as Transport Canada pointed out, § 91.1(a) refers to waters within 3 nautical miles of the U.S. Coast, the applicability of part 91 is not limited to the 3-nautical-mile area. Specifically, § 91.1(b) clarifies that certain part 91 regulations also apply to aircraft operations taking place between 3 and 12 nautical miles from the coast of the United States. Thus, the 12-nautical-mile metric used in this rule is consistent with the FAA's agency practice (as codified in § 91.1(b)) and reflects the directive of Presidential Proclamation 5928.

With respect to operation of foreign-registered aircraft for non-recreational and non-hobby purposes, NBAA, NetMoby, and Planehook Aviation supported the Department's decision not to include foreign-registered UAS in this rulemaking. DJI, however, recognized that the current statutory restrictions in 49 U.S.C. 44102(a)(1) impose constraints on who can register an aircraft in the United States. DJI urged the FAA to consider asking Congress either to drop the aircraft registration requirement for all small UAS altogether or to withdraw the citizenship requirement (including its limited exceptions) as part of the agency's upcoming reauthorization.

Additionally, to the extent some of these operations could be conducted by foreign citizens using foreign-registered small UAS, DJI suggested that DOT evaluate whether existing agreements allow the use of small UAS and, to the extent they cannot be reasonably construed as including these aircraft, explore a diplomatic solution that would allow their use in U.S. airspace. Similarly, Textron Systems, Predesa, LLC, and the Aerospace Industries Association (AIA) suggested that FAA evaluate existing bilateral agreements and consider new bilateral agreements as the mechanism to permit foreign-registered UAS to operate in the United States. The Small UAV Coalition endorsed this approach as well and urged the Department to authorize the operation of specialty air services by foreign-owned small UAS in the United States.

In the NPRM, the FAA proposed to exclude foreign-registered aircraft from part 107 because the proposed rule included a registration component and foreign-registered aircraft may not be registered by the FAA. The FAA has since promulgated a separate interim final rule, titled *Registration and Marking Requirements for Small Unmanned Aircraft*[50] (Registration Rule), to address the registration and marking of all small unmanned aircraft, including unmanned aircraft that will be subject to part 107. In the Registration Rule, the Department acknowledged that under 49 U.S.C. 41703, the Secretary may authorize certain foreign civil aircraft to be navigated in the United States only if: (1) The country of registry grants a similar privilege to aircraft of the United States; (2) the aircraft is piloted by an airman holding a certificate or license issued or made valid by the U.S. government or the country of registry; (3) the Secretary authorizes the navigation; and (4) the navigation is consistent with the terms the Secretary may prescribe.[51]

A foreign civil aircraft is defined in 14 CFR 375.1 as (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States. For those that fall within this definition and wish to operate under the provisions of part 107, they must first apply with the Office of the Secretary's Foreign Air Carrier Licensing Division for permission to operate in the United States.

The Department only will authorize operations of foreign-registered UAS in the United States if it determines that such operations are recognized under international agreements or via findings of reciprocity, consistent with the statutory obligations under section 41703, and via the process as described below. The notion of reciprocity has a long-standing tradition in international relations and has been used in the realm of specialty air services for years. While there are many types of specialty air operations authorized under free trade agreements, it has been the long-standing policy of DOT to require a finding of reciprocity before allowing foreign-owned specialty air services to operate in the United States, even when the United States has no obligation under a trade agreement. The Department also will continue to review whether existing international agreements address the operation of UAS, and if not, what negotiations will need to occur to address these operations in the future.

With respect to the supply of specialty air services in the United States by foreign-owned or controlled entities, DOT may allow these operations to occur provided that the UAS are registered and the owners have provided proof of reciprocity by their homeland of the ability for U.S. investment in UAS operations. Additional conditions may be imposed as necessary to satisfy the statutory requirements of section 41703.

The FAA notes that, initially, all airmen operating under part 107 will be required to obtain a remote pilot certificate. Currently, ICAO has not adopted standards for the certification of pilots of unmanned aircraft that the FAA could rely on in determining whether it is obligated under international law to recognize a foreign-issued UAS-specific airman certificate. However, once an ICAO standard has been developed, this rule will allow the FAA to determine whether a foreign-issued UAS-specific airman certificate was issued under standards that meet or exceed the international standards, and therefore must be recognized by the FAA for purposes of operating a foreign-registered aircraft within the United States.

The FAA also notes that remote pilots of foreign-registered aircraft will need to comply with any applicable requirements imposed by their country of registration that do not conflict with part 107. For example, while part 107 will not require airworthiness certification, the small unmanned aircraft will need to obtain airworthiness certification if required to do so by its country of registration.

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[50] 80 FR 78594, Dec. 16, 2015.

[51] *See also* 14 CFR part 375, Navigation of Foreign Civil Aircraft in the United States.

3. Public Aircraft Operations

The FAA is not making any changes to the final rule regarding public aircraft operations because this rule applies to civil aircraft operations only. In the NPRM, the FAA explained that this rulemaking would not apply to "public aircraft operations with small UAS that are not operated as civil aircraft. This is because public aircraft operations, such as those conducted by the Department of Defense, the National Aeronautics and Space Administration (NASA), Department of Homeland Security (DHS) and NOAA, are not required to comply with civil airworthiness or airman certification requirements to conduct operations. However, these operations are subject to the airspace and air-traffic rules of part 91, which include the 'see and avoid' requirement of § 91.113(b)." [52] The proposed rule did point out, however, that it "would provide public aircraft operations with greater flexibility by giving them the option to declare an operation to be a civil operation and comply with the provisions of proposed part 107 instead of seeking a COA from the FAA." [53]

DJI generally supported the FAA's approach to small UAS public aircraft operations. The Nez Perce Tribe—which also supported the proposal to give public aircraft operations the option to declare an operation to be a civil operation and comply with the provisions to proposed part 107—asserted that the proper statutory interpretation of "public aircraft" includes federally recognized Indian tribes. Conversely, NAAA stated that public aircraft operations should continue to be conducted under the COA process.

One individual said proposed § 107.11 should be amended to indicate that public agencies may choose to voluntarily operate under part 107. The City of Arlington, Texas requested the ability to follow the small UAS rules, not the COA process. Aerial Services, Inc. also said that public entities should be allowed to operate like commercial operators, but only for research and instructional purposes.

Under this rule, a public aircraft operation can continue to operate under a COA or can voluntarily operate as a civil aircraft in compliance with part 107. As stated in the NPRM, this rule will not apply to public aircraft operations of small UAS that are not operated as civil aircraft. These operations must continue to comply with the FAA's existing requirement to obtain a COA providing the public aircraft operation with a waiver from certain part 91 requirements such as the "see and avoid" requirement of § 91.113(b).

However, this rule will provide greater flexibility to public aircraft operations because it allows small UAS public aircraft operations to voluntarily opt into the part 107 framework. In other words, a remote pilot may elect to operate his or her small UAS as a civil rather than a public aircraft and comply with part 107 requirements instead of obtaining a COA. With regard to Nez Perce's assertion that aircraft operated by federally recognized Indian tribes are public aircraft, that issue is beyond the scope of this rule.

The FAA also disagrees with NAAA's comment that public aircraft operations should all be required to obtain a COA. As discussed in III.J.1 of this preamble, the FAA has found that small UAS operations conducted within the parameters of part 107 will not create a hazard to users of the NAS or pose a threat to national security. Consequently, there will be no adverse safety or security impact by the FAA providing public entities with an option to conduct their small UAS operations under part 107.

NASA stated that the proposed rule should be written to specifically authorize NASA small UAS use without a COA because "it is incorrect to infer that NASA's high aviation certification standards do not meet the rigors of civil standards." NASA asserted that the proposed rule conflicts with statutory authority and does not align with the current FAA/NASA memorandum of agreement for the operation of small UAS.

The Department of Defense Policy Board on Federal Aviation (DOD) also supported operations without a COA, "commensurate with civil provisions." DOD suggested several changes to language in the preamble regarding the option for government entities to conduct a civil UAS operation under part 107. DOD argued that "public operator statutory authorities" need to be preserved and the regulation needs to "enable operations without a COA commensurate with civil provisions."

To that end, DOD stated that the FAA should clarify that public agencies currently operating under memoranda of agreement or understanding will be authorized to continue operating in that manner even where provisions of part 107 are more restrictive in nature. DOD also asked that the FAA explicitly exclude aircraft operating under a COA from the applicability of part 107. Finally, DOD recommended that the FAA further amend § 107.1 to clarify that part 107 does not apply to aircraft operated by or for the National Defense Forces of the United States, but could be used as an alternative means of compliance.

These comments are largely beyond the scope of the proposed rulemaking. The proposed rule addressed only civil small UAS operations. As stated above, the NPRM would enable remote pilots of public aircraft to opt into the civil framework for small UAS operations, but does not address public aircraft operations beyond that. In response to NASA, the FAA points out that under this rule, NASA may operate small UAS without a COA as long as it complies with part 107. With regard to DOD's suggestions, there is no need to amend part 107 because § 107.1 expressly limits the applicability of part 107 to civil small UAS. After the effective date of this rule, the FAA does not anticipate issuing a public aircraft operations COA that is less flexible than the regulations promulgated in this rule, provided that all the circumstances are identical to that available to a civil operator.

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million. One commenter suggested that the FAA should designate a special status for public UAS operating in a civil capacity that exempts them from visual-line-of-sight and daylight-only operation limitations. However, this is unnecessary because public aircraft operations are not required to be conducted as civil aircraft subject to part 107. Thus, a public aircraft operation that does not wish to comply with part 107 can operate under the existing public-aircraft framework rather than under part 107.

Agreeing that the proposed rules should not apply to small UAS operations by DOD, NASA, NOAA, DHS or FAA, one individual stated that the proposed rule should apply to "second and third tier public agencies not directly tied to constant aeronautical activities, testing and research." Two other individuals stated that any commercial rules for small UAS should apply to both private and public sectors.

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[52] NPRM, 80 FR at 9554.

[53] NPRM, 80 FR at 9554–9555.

This rule will allow any public agency, regardless of the "tier" of operations, to choose to operate a small UAS as a civil aircraft under part 107.

The Association for Unmanned Vehicle Systems International (AUVSI) recommended that the FAA modify the current limitation in § 107.11 concerning "civil" aircraft to include "public aircraft" as well. This is necessary, AUVSI asserted, because some current operation rules for manned aircraft (such as those found in part 91) apply to both "public aircraft" and "civil aircraft."

The FAA disagrees. This rulemaking applies to civil aircraft only. Expanding its application to public aircraft is beyond the scope of the proposed rule.

The Next Gen Air Transportation Program at North Carolina State University indicated that proposed § 107.3 needs a definition of "civil operation." The commenter asked how a public agency declares a civil operation. The commenter also implied that part 107 does not make clear that there would be no adverse safety effects from allowing public aircraft operations under part 107.

Twelve members of the Wisconsin Legislature signed a joint letter stating that "[t]he NPRM states public entities must get a Certificate of Waiver or Authorization because they are not 'exempt' from restrictions in the proposed rules. However, the proposed rules allow public entities to 'declare an operation to be a civil operation' and therefore operate commercially and be exempted from flight restrictions." The members also stated that the FAA has not "promulgated, clarified or made public its rules, policies, and legal opinions on public versus commercial UAS."

The Wisconsin Society of Land Surveyors stated that "government agencies have been getting a head start on the market, at the expense of the private sector, by obtaining certificates to perform UAS services that are commercial in nature," and "[a]s a result, government and universities are conducting operational missions, developing markets and cultivating clients." This commenter concluded that there "should not be unfair competitive advantages granted to government or university UAS vis-à-vis the private sector."

These comments reflect some misunderstanding of public aircraft operations in general and the FAA's role in such operations. The authority to conduct a public aircraft operation is determined by statute (49 U.S.C. 40102(a)(41) and 40125). The FAA has no authority to prohibit a qualified government entity from conducting public aircraft operations, manned or unmanned. Consequently, many of the FAA's regulations, such as aircraft certification and pilot requirements, do not apply to public aircraft operations. Some of the general operating rules apply to all aircraft operations, public aircraft and civil, and that is where the need for COAs affects public aircraft operations of UAS. For example, all aircraft must comply with 14 CFR 91.113, and UAS require a conditional waiver of that regulation in order to operate in the NAS; the conditions are specified in the COA.

Qualified governmental entities may choose to operate a public aircraft operation as long as they do so within the limits of the public aircraft statute. Under this rule, they may choose to operate their UAS as a civil aircraft instead, and operate under the civil regulations. Government entities have always had the option to do this with their manned aircraft; in some cases, government entities may be required to operate under civil regulations if their operations do not comply with the public aircraft statute. The new UAS regulations do not change this option or the requirements of the public aircraft statute.

"Civil aircraft" is already a defined term in 14 CFR 1.1, which defines a civil aircraft as an aircraft that is not a public aircraft. The definition of public aircraft in part 1 is a restatement of the requirements in the public aircraft statute sections cited above. Government entities that qualify to conduct public aircraft operations but choose to operate instead under civil rules must comply with the same requirements as civil entities; no special notice is required. If an operation is commercial, it is civil by definition, but not all civil operations are commercial. Operations for a commercial purpose are prohibited by the public aircraft statute. The public aircraft statute requires that public aircraft operations have a governmental function and not have a commercial purpose. In short, a government entity may choose to conduct a public aircraft operation within the restrictions of the public aircraft statute (and certain civil regulations applicable to all aircraft operating in the NAS), or it may choose to conduct a civil operation and comply with the requirements of the applicable regulations in 14 CFR.

Under the definitions in 49 U.S.C. 40102(a)(41), a university may qualify to conduct a public aircraft operation if it meets the statutory criteria as a part of the government of the State or a political subdivision of the state. A determination of whether a public university meets these criteria is made by individual states. Operations of aircraft by these universities are subject to the same requirements as other public aircraft operations. The ability to conduct a public aircraft operation is determined by statute and cannot be changed by the FAA. The FAA has not given an "unfair competitive advantage" or showed favoritism to any entity by declaring their operations public aircraft operations because it has no authority to do otherwise under the statute. The FAA does review the operations submitted by UAS proponents to ensure that, as described, they meet the requirements of the public aircraft statute.

The FAA has made public its policies and opinions on all public aircraft matters, manned and unmanned. The FAA has also published Advisory Circular 00–1.1A, *Public Aircraft Operations,* dated February 12, 2014. That document is available on the FAA Web site. Matters of legal interpretation that have been presented to the FAA for its opinion are available as part of the FAA Office of the Chief Counsel's interpretation database.[54]

4. Model Aircraft

The NPRM proposed that part 107 would not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. Section 336(c) defines a model aircraft as an "unmanned aircraft that is—(1) capable of sustained flight in the atmosphere; (2) flown within visual line of sight of the person operating the aircraft; and (3) flown for hobby or recreational purposes." Subsection 336(a) specifically prohibits the FAA from promulgating rules regarding model aircraft that meet all of the following statutory criteria:

- The aircraft is flown strictly for hobby or recreational use;
- The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- The aircraft is limited to not more than 55 pounds unless otherwise certificated through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

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[54] *http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/agc200/Interpretations/.*

- The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

Because of the statutory prohibition on FAA rulemaking regarding model aircraft that meet the above criteria, the NPRM proposed that model aircraft meeting these criteria would not be subject to the provisions of part 107. However, although section 336(a) exempts certain model aircraft from FAA rulemaking, section 336(b) explicitly states that the exemption in section 336(a) does not limit the FAA's authority to pursue enforcement action against those model aircraft that "endanger the safety of the national airspace system." The FAA proposed to codify this authority in part 101 by prohibiting a person operating a model aircraft from endangering the safety of the NAS.

The FAA received approximately 2,850 comments on the model-aircraft aspect of the NPRM. Many of these commenters, including NAMIC, Horizon Hobby, LLC (Horizon Hobby), Skyview Strategies, Inc. (Skyview Strategies), the Academy of Model Aeronautics (AMA) and many individuals, supported excluding model aircraft operations from the provisions of part 107. DJI, Aviation Management, and UAS America Fund, LLC (UAS America Fund) recommended that the FAA expand the model-aircraft exception from the requirements of part 107 and adopt more lenient regulatory standards for recreational uses of small UAS that do not comply with all of the criteria specified in section 336. UAS America Fund suggested that the final rule make a special allowance for small UAS operations that do not meet all of the criteria of section 336(a) but are conducted for educational or other salutary purposes.

Conversely, NAAA, the Transportation Trades Department AFL–CIO (TTD), A4A, the American Chemistry Council, the Information Technology and Innovation Foundation, the Southwest Airlines Pilots' Association (SWAPA) and a number of individual commenters advocated for greater regulation and oversight of all model aircraft operations. Many of these commenters felt that the risks associated with recreational and non-recreational UAS operations are the same, and thus, there should be no difference in how these operations are regulated. A number of commenters also expressed concern that recreational and hobby use of UAS could pose a significant safety hazard and that additional regulations should be imposed to mitigate this hazard. For example, NAAA asserted that "[t]he majority of UAS incidents that occurred in recent years have been by UAS operated as model aircraft . . . including two in 2014 where [agricultural] operators were harassed by model aircraft in Idaho and Illinois." Green Vegans argued that failure to regulate model aircraft operations may have an adverse impact on the environment.

Section 336 of Public Law 112–95 specifically prohibits the FAA from issuing any new rules with regard to model aircraft that satisfy the statutory criteria specified in that section. Accordingly, the FAA cannot impose additional regulations on model aircraft that meet the criteria of section 336 nor can the FAA make those aircraft subject to the provisions of part 107.

However, with regard to the request that the FAA apply the terms of section 336 to other operations, the FAA agrees with NAAA, TTD, A4A and other commenters who pointed out that, from a safety point of view, there is no difference between the risk posed by recreational operations, operations used for salutary purposes, and non-recreational/non-salutary operations. There is no data indicating that a small UAS operation whose operational parameters raise the safety risks addressed by part 107 would become safer simply as a result of being conducted for recreational or salutary purposes rather than commercial purposes. As such, the FAA declines the request to apply the terms of section 336 beyond the statutory criteria specified in that section.

The Air Line Pilots Association, International (ALPA) and the Kansas State University Unmanned Aircraft Systems Program (Kansas State University UAS Program) stated that if model aircraft operations are being added to part 101, then the title of part 101 should be changed to reflect that part 101 now encompasses those operations. AMA, Horizon Hobby, Skyview Strategies, and numerous individuals noted that the statutory text of section 336 also applies to "aircraft being developed as model aircraft," and these commenters asked the FAA to add the pertinent statutory text to the model-aircraft provisions of part 101.

As the commenters pointed out, the statutory language of section 336 applies not just to aircraft that are operated as model aircraft but also to "aircraft being developed as a model aircraft."[55] Accordingly, the FAA has added this statutory language to the regulatory text of § 101.41. The FAA also agrees with ALPA and the Kansas State University UAS Program and has updated the title of part 101 to indicate that this part will now include model aircraft operations that are operated under section 336.

AMA and a number of individual commenters supported the proposed inclusion of the section 336 criterion concerning nationwide community-based organizations into the regulatory text of part 101. A number of other commenters raised concerns about having to comply with safety guidelines issued by a community-based organization and having to operate within the programming of such an organization. The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative stated that the FAA should demonstrate the efficacy of using community-based safety guidelines to regulate model aircraft operations prior to using such an approach. DJI and the Stadium Managers Association, Inc. stated that it is unclear what makes an organization a nationwide community-based organization within the meaning of section 336. DJI went on to ask the FAA to provide guidance as to what criteria the agency will look for in recognizing a nationwide community-based organization. The Washington Aviation Group and Green Vegans suggested that the FAA identify, or seek comments to identify, a single set of community-based safety guidelines and incorporate those guidelines by reference into proposed part 101 and make them available on the FAA's Web site.

Section 336 of Public Law 112–95 includes a specific list of criteria that must be satisfied in order for the section 336 exception to apply. One of these criteria is that "the [model] aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization."[56] Because compliance with a community-based set of safety guidelines and operating within the programming of a nationwide community-based organization is one of the statutory criteria that must be satisfied in order for section 336 to apply, the FAA has retained this provision.

The FAA notes, however, that those model aircraft operations that do not wish to comply with a community-based set of safety guidelines and operate within the programming of a nationwide community-based organization will be able to simply conduct their operations under part 107. Part 107 was designed to impose the minimal burden necessary to ensure the safety and security of a small UAS operation. As discussed in the Regulatory Impact Assessment that accompanies this rule, the out-of-pocket cost for someone who wishes to operate under part 107 will be less than $200.

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[55] Public Law 112–95, sec. 336(a).

[56] Public Law 112–95, sec. 336(a)(2).

With regard to comments asking for additional clarity as to what makes an organization a nationwide community-based organization under section 336, the FAA notes that this issue is beyond the scope of this rule. The FAA is currently engaged in a separate regulatory action titled *Interpretation of the Special Rule for Model Aircraft,*[57] (Interpretive Rule) in which the FAA is interpreting the statutory provisions of section 336 and explaining how those provisions apply to model aircraft operations. The FAA published this interpretation for public comment in June 2014 and has since received over 33,000 public comments. The FAA is currently considering the issues raised by these commenters and will issue a final Interpretive Rule that reflects its consideration of the comments.

Because the FAA is considering the specific meaning of section 336 provisions in a separate regulatory action, in order to avoid duplication, the FAA limited the scope of the model-aircraft component of this rulemaking simply to codifying the FAA's enforcement authority over model-aircraft operations that endanger the safety of the NAS. As such, issues concerning the specific meaning of section 336 (such as what makes an organization a nationwide community-based organization) are beyond the scope of this rule.

With regard to Washington Aviation Group and Green Vegans' suggestions that the FAA codify a single set of community-based safety guidelines and incorporate those guidelines by reference into part 101, the FAA notes that this suggestion is also beyond the scope of this rule. However, even if the scope of this rule was broad enough to reach this issue, the language of section 336(a)(2) is not limited to a single set of community-based safety guidelines, nor is it limited to community-based safety guidelines that exist today. Accordingly, the FAA cannot incorporate a single definitive set of safety guidelines into the regulatory text of part 101.

The NextGen Air Transportation Program at NC State University stated that § 101.41 should be amended to include a requirement to operate at locations approved by a nationwide community-based organization. Another commenter suggested that the FAA clarify that the programming of nationwide community-based organizations is interpreted to include location. Colorado Ski Country USA said the FAA should add a provision that prohibits recreational UAS operations within the airspace above "Places of Public Accommodation" without prior approval from the Place of Public Accommodation.

As discussed previously, the scope of the model-aircraft component of this rulemaking is limited simply to codifying the FAA's enforcement authority over model-aircraft operations that endanger the safety of the NAS. Accordingly, these suggestions are beyond the scope of this rule.

A number of commenters, including ALPA, NAAA, and the International Air Transport Association, supported the FAA's proposal to codify a prohibition on model aircraft operations endangering the safety of the NAS. NAAA emphasized that the FAA should "continue to utilize every tool possible to ensure model aircraft are operating safely in the NAS."

The Small UAV Coalition, the Airports Council International—North America, and the American Association of Airport Executives asked the FAA to clarify what actions would endanger the safety of the NAS. AMA argued that enforcement of the "endangering the safety of the NAS" provision should not affect other airman certificates that may be held by a model aircraft operator. AMA and several other commenters also argued that the FAA is not permitted to oversee general safety issues involving model aircraft. These commenters suggested narrowing the "endangering the safety of the NAS" provision to make it analogous to 14 CFR 91.11, which prohibits interference with a crewmember.

Subsection 336(b) explicitly states that the FAA has authority to pursue enforcement action "against persons operating model aircraft who endanger the safety of the national airspace system." Because the scope of the FAA's enforcement authority is explicitly specified in section 336(b), the FAA has decided to finalize the proposed prohibition on model aircraft operators endangering the safety of the NAS. To do otherwise and artificially narrow the FAA's statutory enforcement authority over section 336 operations would be contrary to Congressional intent because Congress has explicitly specified, in section 336(b), the scope of the FAA's enforcement authority over model aircraft operations.

With regard to examples of actions that may endanger the safety of the NAS, the FAA notes that this is an issue that is being addressed by the Interpretive Rule.[58] Because the issues addressed by the Interpretive Rule have been subject to extensive public input (33,000 plus comments) and because addressing those issues here would be duplicative, the FAA will defer discussion of what qualifies as endangering the safety of the NAS to the Interpretive Rule. Finally, with regard to AMA's suggestion that enforcement of the "endangering the safety of the NAS" provision should not affect other airman certificates that may be held by a model aircraft pilot, the FAA notes that determination of the remedy that it may seek in specific enforcement cases is beyond the scope of this rulemaking.

Many commenters, including Skyview Strategies, AMA, the Experimental Aircraft Association, and numerous individuals, reiterated arguments that were raised in the comments filed on the Interpretive Rule. These commenters restated arguments such as: (1) Considering model aircraft to be "aircraft" would effectively make those aircraft subject to manned-aircraft regulations; (2) the Interpretive Rule interprets the phrase "hobby or recreational use" too narrowly; (3) the Interpretive Rule does not properly interpret Congressional intent; (4) model aircraft operations should not be subject to any airspace restrictions; (5) requiring notification when operating within 5 miles of an airport is too burdensome; and (6) the interpretation of "visual line of sight" within the Interpretive Rule would prohibit the use of first-person-view devices. AMA and the Small UAV Coalition argued that the FAA must address and adjudicate the 33,000 plus comments that were made on the Interpretive Rule and resolve the issues and concerns presented before moving forward in finalizing the small UAS Rule.

Because these are all issues that have been commented on (in much greater detail) and are currently being considered as part of the Interpretive Rule, considering these issues in this rule would be duplicative. Accordingly, the FAA declines to address these issues here as they are currently the subject of a separate regulatory action.

The FAA also declines the suggestion that it issue the final Interpretive Rule prior to finalizing this rule. The FAA is currently working as quickly as possible to issue the final Interpretive Rule.

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[57] 79 FR 36172, June 25, 2014.

[58] *See, e.g.,* 79 FR at 36175–76.

Because the model-aircraft component of this rulemaking simply codifies the FAA's statutory authority over section 336 operations and because delaying this rulemaking would prejudice non-model small UAS operations, the FAA declines to withhold this rule until issuance of the final Interpretive Rule.

AMA and Horizon Hobby asked the FAA to add regulatory text that would exempt model aircraft operations and aircraft being developed as model aircraft from the regulatory provisions of parts 21, 43, 45, 47, 61, and 91. These commenters also noted the revision that the NPRM proposed to make in § 91.1(e) and expressed concern that this revision may make model aircraft subject to the provisions of part 91. Skyview Strategies asked the FAA to rewrite the guidance that it recently issued to law enforcement agencies concerning model aircraft that may be operated unsafely.

As discussed previously, the proposed rule was limited simply to codifying the FAA's statutory enforcement authority over model aircraft operations. Because the FAA did not propose making any changes to its existing regulations with regard to section 336 operations, those changes are beyond the scope of this rulemaking. Similarly, the FAA did not propose to make any changes to its existing enforcement guidance as part of this rulemaking, and those changes are also beyond the scope of this rule.

With regard to the revision that the NPRM proposed in § 91.1(e), this revision does not expand the scope of part 91. Specifically, the NPRM proposed to move the regulatory text concerning existing exceptions to part 91 applicability for moored balloons, kites, unmanned rockets, and unmanned free balloons into a newly created subsection (§ 91.1(e)). The NPRM then proposed to add an extra exception (also in § 91.1(e)) to part 91 applicability for small UAS operations governed by part 107, because the purpose of this rulemaking is, in part, for the regulations of part 107 to replace the regulations of part 91 as the governing regulations for small UAS operations. Because this additional exception for part 107 operations is the only substantive change that the NPRM proposed to the applicability of part 91, finalizing this exception would not expand the scope of part 91. Accordingly, this rule will finalize § 91.1(e) as proposed in the NPRM.

Two commenters disagreed with one aspect of the proposed definition of model aircraft, namely that the aircraft must be capable of sustained flight in the atmosphere. These commenters argued that the proposed requirement was more burdensome than requirements imposed on some manned aircraft operations. However, section 336(c)(1) specifically defines a "model aircraft" in pertinent part as an aircraft that is "capable of sustained flight in the atmosphere." Because the definition of "model aircraft" is specified in statute, this rule will finalize the statutory definition in the regulatory text of part 101.

The Aircraft Owners and Pilots Association (AOPA) and The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative suggested that the FAA take additional steps to issue clear and definitive guidance for recreational operators and to encourage manufacturers to include information on this FAA guidance in their packaging materials. AOPA further stated that the FAA should work with AOPA and remote control aircraft groups "to conduct education outreach, and publish guidance to help pilots file timely reports of reckless UAS operations."

The FAA agrees with AOPA and The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative that guidance and education would greatly assist model aircraft operators. To that end, the FAA has partnered with AMA, AUVSI, AOPA and the Small UAV Coalition on an education campaign titled "Know Before You Fly," which is designed to educate prospective users about the safe and responsible operation of model aircraft.[59] As pointed out by the commenters, education and outreach efforts will enhance the safety of the model aircraft community and, just like it did with the "Know Before You Fly" campaign, the FAA will consider partnering with interested stakeholders in future education and outreach efforts.

The FAA is also currently taking the steps suggested by AOPA and The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative to issue clear and definitive guidance for recreational operators. Specifically, the FAA is working on drafting and issuing a final Interpretive Rule that addresses the issues raised by commenters. The agency has also issued an updated AC 91–57A, which is the main advisory circular for model aircraft operations.

5. Moored Balloons, Kites, Amateur Rockets, and Unmanned Free Balloons

Moored balloons, kites, amateur rockets, and unmanned free balloons are currently regulated by the provisions of 14 CFR part 101. Because they are already incorporated into the NAS through part 101, the NPRM proposed to exclude them from the provisions of part 107. The FAA did not receive any comments objecting to this aspect of the NPRM and, as such, this rule will, as proposed, exclude part 101 operations from the applicability of part 107.

The FAA did, however, receive several comments asking for clarification as to which types of operation are subject to part 101. The NextGen Air Transportation Program at NC State University and three individuals asked whether tethered powered unmanned aircraft meet the definition of unmanned free balloons and kites, which are subject to part 101.

FAA regulations define a balloon as "a lighter-than-air aircraft that is not engine driven, and that sustains flight through the use of either gas buoyancy or an airborne heater."[60] A kite is defined as "a framework, covered with paper, cloth, metal, or other material, intended to be flown at the end of a rope or cable, and having as its only support the force of the wind moving past its surfaces."[61] Based on these definitions, a small unmanned aircraft that uses powered systems for actions such as propulsion or steering is not a balloon or kite subject to part 101.[62]

A commenter asked whether unmanned moored airships and blimps are subject to part 101. In response, the FAA notes that an airship is defined as "an engine-driven lighter-than-air aircraft that can be steered."[63] Conversely, as discussed previously, the definition of "balloon" excludes aircraft that are engine-driven. Because an airship is not a balloon or kite, a moored unmanned airship is not encompassed by part 101. With regard to blimps, an engine-driven blimp would be considered an airship, which is not subject to part 101.

6. Current Treatment of UAS and Grandfathering of Section 333 Exemption Holders

The FAA currently accommodates non-recreational small UAS use through various mechanisms, such as special airworthiness certificates, exemptions, and COAs. However, the FAA recognizes that many holders of exemptions issued under section 333 of Public Law 112–95 (section 333 exemptions) may wish to take advantage of part 107 when it goes into effect. On the other hand, some section 333 exemption holders may prefer to continue operating under the terms and conditions of their exemptions. Therefore, the FAA will allow any section 333 exemption holder to either continue operating under the terms and conditions of the exemption until its expiration, or conduct operations under part 107 as long as the operation falls under part 107.

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[59] *http://knowbeforeyoufly.org/.*

[60] 14 CFR 1.1 (definition of "balloon").

[61] *Id.* (definition of "kite").

[62] Additional information can be found in FAA Order 7210.3, Chapter 18, Section 5, Moored Balloons, Kites, Unmanned Rockets, and Unmanned Free Balloons/Objects, *http://www.faa.gov/documentLibrary/media/Order/7210.3Z.pdf*; and FAA Order 7110.65, Chapter 9, Section 6, Unmanned Free Balloons, *http://www.faa.gov/documentLibrary/media/Order/ATC.pdf.*

[63] 14 CFR 1.1 (definition of "airship").

Approximately 40 commenters criticized the framework currently regulating small UAS operations as slow, cumbersome, and inefficient. These commenters expressed concern that the current framework is having an adverse effect on UAS development in the United States.

The FAA anticipates that this rulemaking will alleviate many of the concerns commenters raised with the existing UAS framework. Under this rule, many operations that would previously require exemptions and COAs will now fall under the purview of part 107, which generally does not require an exemption or a COA prior to operation.

Some commenters, including the American Petroleum Institute and the Consumer Electronics Association (CEA), encouraged the FAA to acknowledge that existing permitted commercial uses of small UAS are unaffected by the rule. The American Petroleum Institute stated that such acknowledgement is necessary to avoid unintended consequences and preserve the expectation and business interests of current authorization holders.

CEA stated that the FAA should either grandfather-in existing exemptions or afford existing exemptions a 3-year transition period in recognition of the hard work and expense each exemption represents. The commenter further recommended that, if the FAA chose a 3-year transition period, and if no renewal was sought, then the exemption would terminate 3 years after the new rules became effective. However, if a petitioner sought renewal of the exemption, the commenter recommended that the exemption remain valid until final action by the FAA on the renewal application. CEA noted that, to the extent that the new rules are more permissive than existing exemptions, operators should be permitted to rescind their exemption and operate under the new rules.

The FAA clarifies that current section 333 exemptions that apply to small UAS are excluded from part 107. The FAA has already considered each of these individual operations when it considered their section 333 exemption requests and concluded that these operations do not pose a safety or national security risk.

The FAA recognizes, however, that there may be certain instances where part 107 is less restrictive than a section 333 exemption. Therefore, under this rule, a section 333 exemption holder may choose to operate in accordance with part 107 instead of operating under the section 333 exemption. This approach will provide section 333 exemption holders time to obtain a remote pilot certificate and transition to part 107. Operations that would not otherwise fall under part 107 may not take advantage of this option. For example, an operation with a section 333 exemption that does not fall under part 107, such as an operation of a UAS weighing more than 55 pounds, would not have the option of operating in accordance with part 107 rather than with its section 333 exemption.

Additionally, when section 333 exemptions come up for renewal, the FAA will consider whether renewal is necessary for those exemptions whose operations are within the operational scope of part 107, which also includes those operations that qualify for a waiver under part 107. The purpose of part 107 is to continue the FAA's process of integrating UAS into the NAS. If a section 333 exemption is within the operational scope of part 107, there may be no need for the agency to renew an exemption under section 333. Because the FAA's renewal considerations will be tied to the outstanding section 333 exemptions' expiration dates, a 3-year transition period is not necessary. This will not affect those section 333 exemptions that are outside of the operational scope of part 107 or where a part 107 waiver would not be considered.

Future exemptions may be issued to provisions of part 107 that do not allow for a waiver. These exemptions may also be issued pursuant to section 333. Small UAS remote pilots holding an exemption for a provision contained in part 107 will not be excluded from the other part 107 requirements if the exemption specifies that part 107 provisions that are not waived or exempted still apply.

A commenter asked whether there will be a grace period for individuals already operating small UAS to comply with the requirements of part 107, or whether those individuals will be required to stop operating until they can complete those requirements.

As stated above, a person currently operating under a section 333 exemption will not need to immediately comply with part 107. Additionally, a person currently operating on the basis of a part 61 pilot certificate other than student pilot would, as discussed below, be eligible to obtain a temporary remote pilot certificate upon satisfying the prerequisites specified in this rule. The temporary remote pilot certificate will authorize its holder to operate under part 107.

D. Definitions

The NPRM proposed to define several terms in part 107 including: (1) Control station; (2) corrective lenses; (3) unmanned aircraft; (4) small unmanned aircraft; and (5) small unmanned aircraft system (small UAS).[64]

1. Control Station

The NPRM proposed to define a control station as "an interface used by the operator to control the flight path of the small unmanned aircraft." The NPRM explained that, unlike a manned aircraft, the interface that is used to control the flight path of a small unmanned aircraft remains outside of the aircraft. The proposed definition was intended to clarify the interface that is considered part of a small UAS under part 107.

NAAA and another commenter agreed with the proposed definition. Transport Canada asked the FAA to consider refining this definition by adding a definition of "control link" to distinguish between command and control functions and communication functions. One commenter asserted that the proposed definition does not encompass instances in which a small UAS's flight path is preprogrammed via waypoints, and the interface used by the remote pilot is intended simply to commence execution of the program.

The link between the ground control station and the small unmanned aircraft is commonly referred to as the "command and control link" or "C2." When a communication link between the remote pilot and another person, such as a visual observer or an air traffic controller, is added to C2, it is referred to as "command, control and communications" or "C3." C2 is an inherent requirement for safe operations, even if the small unmanned aircraft flight is completely autonomous (*i.e.*, preprogrammed flight operations without further input from the remote pilot) because the remote pilot must be able to take direct command of the flight in order to exercise his/her responsibility for collision avoidance, yielding right of way to other aircraft, etc. C3, on the other hand, is only needed if the remote pilot is using the ground control station to communicate with another person directly involved in the operation, such as a visual observer. Because this rule does not require multi-person operations, the definition of a ground control station will not include the requirement for a communications link.

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[64] The FAA also proposed to create two new crewmember positions: (1) Operator; and (2) visual observer. Those positions are discussed in sections III.E.1 and III.E.2.b of this preamble.

Furthermore, as technology advances, the concept and use of C2 and C3 could change significantly. Omitting a rigid regulatory definition of these terms in this rule will allow them to evolve as technology changes.

2. Corrective Lenses

In connection with the visual-line-of-sight requirements in the NPRM, the FAA proposed to define the term "corrective lenses" as "spectacles or contact lenses." The FAA explained that, unlike other vision-enhancing devices, spectacles and contact lenses do not restrict a user's peripheral vision, and thus could be used to satisfy the visual-line-of-sight requirements proposed in the NPRM. The FAA did not receive any adverse comments on this proposed definition, and thus finalizes the proposed definition of "corrective lenses" in this rule without change.

3. Unmanned Aircraft

The NPRM proposed to define "unmanned aircraft" as "an aircraft operated without the possibility of direct human intervention from within or on the aircraft." This proposed definition would codify the statutory definition of "unmanned aircraft" specified in Public Law 112–95, section 331(8).

MAPPS stated that the definition of "unmanned aircraft" needs to be clarified because the current definition leaves open the possibility that paper airplanes, model airplanes, model rockets, and toys could be considered unmanned aircraft. The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative stated that this definition and the definition of small unmanned aircraft may permit infant passengers and asked the FAA to amend the definition to categorically prohibit the carriage of passengers on an unmanned aircraft.

The definition of unmanned aircraft as "an aircraft operated without the possibility of direct human intervention from within or on the aircraft" is a statutory definition and, as such, this rule will finalize that definition as proposed. In response to MAPPS' comment, as discussed in section III.C.5 of this preamble, part 107 will not apply to operations governed by part 101. Those operations include model aircraft, moored balloons, kites, amateur rockets, and unmanned free balloons. With regard to carriage of infants on small unmanned aircraft, this concern is addressed by other provisions in this rule that prohibit careless or reckless operations that endanger the life of another person.

4. Small Unmanned Aircraft

The NPRM proposed to define "small unmanned aircraft" as "an unmanned aircraft weighing less than 55 pounds including everything that is on board the aircraft." The NPRM noted that Public Law 112–95, section 331(6) defines a small unmanned aircraft as "an unmanned aircraft weighing less than 55 pounds." However, the NPRM pointed out that this statutory definition does not specify whether the 55-pound weight limit refers to the total weight of the aircraft at the time of takeoff (which would encompass the weight of the aircraft and any payload on board) or simply the weight of an empty aircraft. The NPRM proposed to define small unmanned aircraft using total takeoff weight because: (1) Heavier aircraft generally pose greater amounts of public risk in the event of an accident, because they can do more damage to people and property on the ground; and (2) this approach would be similar to the approach that the FAA has taken with other aircraft, such as large aircraft, light-sport aircraft, and small aircraft.

Commenters including AOPA, ALPA, and the Helicopter Association International, supported the proposed definition. The New England Chapter of the Association of Unmanned Vehicles International and Devens IOP, commenting jointly, pointed out that there are commercial applications being developed that will need to exceed 55 pounds. Event 38 Unmanned Systems stated that rather than segregate small unmanned aircraft by total weight, the FAA should use a "kinetic energy split" that combines weight and speed.

Several commenters asked that the 55-pound weight limit be lowered. Event 38 Unmanned Systems recommended an initial weight restriction of 10 pounds, with adjustments based on subsequent research. Prioria Robotics, Inc. stated that the weight limitation for small unmanned aircraft should be less than 25 pounds, and that the definition should include a requirement that the aircraft be "hand-launchable." Another commenter asked for the weight limit to be reduced to 33 pounds.

Green Vegans stated that FAA must provide test data on the collision impact of a 55-pound UAS, traveling at various speeds, on both humans and birds. The advocacy group argued that the public cannot make informed comments on the proposed weight limitation without such data. The advocacy group also noted that such data would be provided by a National Environmental Policy Act (NEPA) Environmental Impact Statement, which the group stated the FAA must do. Crew Systems similarly opposed the maximum weight limitation, arguing that FAA provided no justification for it. The company asserted that a 55-pound UAS is large enough to be hazardous when operated in an urban environment, even if care is taken. Although it did not expressly object to the weight limitation, the United States Ultralight Association also expressed concern about the significant damage that a 50-plus-pound unmanned aircraft could do to light, open-cockpit aircraft.

Other commenters asked the FAA to increase the 55-pound weight limit. Consumers Energy Company objected to the definition's proposed weight limitation as too light, arguing that a 55-pound weight restriction will negatively impact small UAS flight times and the usage of alternative fuel sources. Consumers Energy urged the FAA to consider fuel loads and to increase the weight restriction to 120 pounds. The commenter also suggested that, if the FAA has concerns about safety, it could create subcategories under which maximum weight restriction is imposed on the fuel load, rather than adopt a blanket weight restriction. Several commenters also suggested higher weight limits, including: 80 pounds; a range of 30–100 pounds; and 150 pounds. Another commenter called the weight restriction "arbitrary," and noted that other States have defined small UAS to include unmanned aircraft weighing up to 150 kilograms.

One commenter suggested that the FAA amend the definition of small unmanned aircraft to include aircraft weighing exactly 55 pounds. Another commenter stated that the definition of "small unmanned aircraft" must be clarified to account for different types of UAS (*e.g.*, fixed-wing, rotor-wing, small, medium, large).

The definition of "small unmanned aircraft" is a statutory definition. Specifically, Public Law 112–95, section 331(6) defines a small unmanned aircraft as "an unmanned aircraft weighing less than 55 pounds." Accordingly, this rule will retain the statutory definition, which includes 55 pounds as the weight limit for a small unmanned aircraft. However, the FAA emphasizes that, as discussed in section III.A of this preamble, this rule is merely one step of UAS integration into the NAS. As such, the FAA anticipates that future rulemakings will integrate larger UAS into the NAS and thus enable additional commercial opportunities.

Several commenters discussed the ambiguity in the statutory definition with regard to how the 55-pound weight limit should be calculated. The Small UAV Coalition and Federal Airways & Airspace supported the inclusion of payload in the weight calculation. Conversely, DJI, the Associated General Contractors of America, and another commenter questioned whether the 55-pound weight limitation should include payload that is carried by the small unmanned aircraft. DJI argued that the FAA does not consider the weight of payload in its regulations governing the operation of ultralights. Kapture Digital Media stated that the 55-pound weight limit should not include the weight of the battery.

As noted in the NPRM, the FAA uses total takeoff weight for multiple different types of aircraft, including large aircraft, light-sport aircraft, and small aircraft.[65] One of the reasons that the FAA uses total takeoff weight in all of these regulations is because in the event of a crash, a heavier aircraft can do more damage to people and property on the ground than a lighter aircraft. In evaluating this type of risk for a small UAS, it is the total mass of the small unmanned aircraft that is important; the manner in which that mass is achieved is irrelevant. In other words, a 50-pound unmanned aircraft carrying 30 pounds of payload does not pose a smaller risk than an 80-pound unmanned aircraft that is not carrying any payload. As such, this rule will retain the proposed inclusion of everything onboard the aircraft in the 55-pound weight limit of a small unmanned aircraft.

The General Aviation Manufacturers Association (GAMA) pointed out that, although the FAA typically points to maximum takeoff weight when identifying an aircraft's weight and associated mass, the proposed definition of small unmanned aircraft does not include the term "takeoff." As such, GAMA recommended that the FAA modify the definition to reference the point of takeoff as follows: "Small unmanned aircraft means an unmanned aircraft weighing less than 55 pounds including everything that is on board the aircraft on takeoff." Another commenter stated that the choice of "on board" in the definition of "small unmanned aircraft" will create confusion, because these aircraft routinely have "attached" external payloads because there is little room for internal "on board" payloads.

The FAA agrees with these comments and has modified the proposed definition to refer to the total aircraft weight at takeoff and to include possible external attachments to the aircraft in the calculation of small unmanned aircraft weight.

5. Small Unmanned Aircraft System (Small UAS)

Finally, the NPRM proposed a definition of "small unmanned aircraft system" as "a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system." The NPRM explained that this proposed definition would be similar to the statutory definition of UAS specified in Public Law 112–95, section 331(9), except that it does not include a "pilot in command" reference that appears in the statute. The FAA did not include the "pilot in command" reference in the proposed definition of small UAS because that position did not exist under the NPRM. Even though the FAA is creating a remote pilot in command position in this final rule, the FAA considers adding a reference to that position in the small UAS definition as unnecessary.

AirShip Technologies Group, Inc. (AirShip Technologies) supported the proposed definition. Conversely, Transport Canada asked the FAA to consider whether it would be better to use the ICAO terminology of remotely piloted aircraft system (RPAS) instead of small UAS. Foxtrot Consulting, LLC stated that the inclusion of the phrase "associated elements (including communications links and the components that control the small unmanned aircraft)" in the definition of small UAS creates a "regulatory nightmare," because it means cellular network providers and their infrastructure are considered part of a small UAS. The commenter pointed out that small UAS can be controlled via Wi-Fi and cellular networks, which opens enormous capabilities to small UAS operations. The commenter went on, however, to question whether, as a result of the proposed definition, a cellular provider is liable if a UAS being controlled through their network causes damage to property, serious injury, or death.

The proposed definition of small UAS is derived from the statutory definition of "unmanned aircraft system" in Public Law 112–95, § 331(9). As such, this final rule will codify the proposed definition. Because Congress has selected the term "unmanned aircraft system" to describe this type of a system, the FAA may not use a different term, such as RPAS, in this rule.

With regard to cellular providers, the requirements of this rule apply only to the remote pilot, the owner of the small UAS, and people who may be involved in the operation of the small UAS. As such, a cellular provider whose involvement in the small UAS operation is limited to a remote pilot simply using the provider's infrastructure would not be in violation of part 107 if something were to go wrong. The FAA does not opine on liability issues that are beyond the scope of this rule, such as whether the provider may be liable to the remote pilot or third parties under tort or contract law.

The NextGen Air Transportation Program at NC State University and another commenter recommended specifically stating that tethered powered small UAS are considered small UAS under proposed part 107. In response to these comments, the FAA notes that the definition of small UAS in this rule includes tethered powered small UAS.

6. Other Definitions

One commenter asked the FAA to define the term "aerial photography" in the regulatory text. However, with the exception of operations involving the transportation of property, part 107 does not contain any requirements specific to the use to which a small UAS is put. For example, a small UAS used for aerial photography will be subject to the same operating restrictions as a small UAS used for bridge inspection, precision agriculture, or utility inspection. Because this rule does not contain any requirements specific to aerial photography, no definition of the term is necessary.

E. Operating Rules

As discussed earlier in this preamble (section III.A), instead of a single omnibus rulemaking that applies to all small UAS operations, the FAA has decided to proceed incrementally and issue a rule governing small UAS operations that pose the least amount of risk. Subpart B of part 107 will specify the operating constraints of these operations. The FAA emphasizes that it intends to conduct future rulemaking(s) to incorporate into the NAS small UAS operations that pose a greater level of risk than the operations that will be permitted by this rule.

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[65] *See* 14 CFR 1.1 (referring to "takeoff weight" for large, light-sport, and small aircraft in the definitions for those aircraft).

1. Remote Pilot in Command

The NPRM proposed to create a new crewmember position (called "operator") for small UAS operations conducted under part 107. The proposed rule would define an operator as a person who manipulates the flight controls of a small UAS. The NPRM also proposed prohibiting a person from serving as an operator if he or she does not have an unmanned aircraft operator certificate with a small UAS rating, which would be a new airman certificate created by the proposed rule. Finally, the NPRM invited comments as to whether this rule should create a pilot in command (PIC) position and whether the PIC should be given the power to deviate from FAA regulations in response to an in-flight emergency.

For the reasons discussed below, this rule will remove the proposed crewmember position of "operator" and will instead create a new position of "remote pilot in command." The remote pilot in command will have the final authority and responsibility for the operation and safety of a small UAS operation conducted under part 107. Additionally, the remote pilot in command will be required to obtain a remote pilot certificate with a small UAS rating. However, an uncertificated person will be permitted to manipulate the flight controls of a small UAS as long as he or she is directly supervised by a remote pilot in command and the remote pilot in command has the ability to immediately take direct control of the small unmanned aircraft. Finally, in case of an in-flight emergency, the remote pilot in command will be permitted to deviate from any rule of part 107 to the extent necessary to meet that emergency. A remote pilot in command who exercises this emergency power to deviate from the rules of part 107 will be required, upon FAA request, to send a written report to the FAA explaining the deviation.

a. Terminology

The NPRM proposed to create a new crewmember position called "operator," which would be defined as a person who manipulates the flight controls of a small UAS. The NPRM also proposed to create a new airman certificate for the operator, which would be called an "unmanned aircraft operator certificate with a small UAS rating." The NPRM noted, however, that the term "operator" is already used in manned-aircraft operations, and invited comments as to whether this term would cause confusion if used in part 107.

Several commenters noted that using the term "operator" in part 107 could result in confusion. NTSB, ALPA, and TTD pointed out that "operator" is currently used to refer to a business entity and that use of that term to refer to a small UAS pilot would be inconsistent with existing usage. Transport Canada and several other commenters stated that ICAO defines the person manipulating the flight controls of a small UAS as a "remote pilot" and asked the FAA to use this terminology in order to harmonize with ICAO. Transport Canada also noted that: (1) Canada uses the same terminology as ICAO; and (2) calling an airman certificate issued under part 107 an "operator certificate" may lead to confusion with FAA regulations in part 119, which allow a business entity to obtain an operating certificate to transport people and property. ALPA and TTD suggested that the person manipulating the controls of the small UAS should be referred to as a pilot, asserting that this would be consistent with how the word pilot has traditionally been used.

As pointed out by the commenters, FAA regulations currently use the term "commercial operator" to refer to a person, other than an air carrier, who engages in the transportation of persons or property for compensation or hire.[66] Commercial operators are issued an "operating certificate" under 14 CFR part 119.[67] Because other FAA regulations already use the term "operator" to refer to someone other than a small UAS pilot under part 107, the FAA agrees with commenters that use of the term "operator" in this rule could be confusing.

In considering alternative terminology to replace the term "operator," the FAA noted that ICAO[68] and the United Kingdom[69] both use the term "remote pilot" to refer to the person manipulating the flight controls of a small UAS. Additionally, as pointed out by Transport Canada, Canada also uses the term "remote pilot." Accordingly, this rule will use the term "remote pilot" instead of "operator" in order to harmonize with international terminology. Consequently, the FAA has changed the name of the airman certificate issued under part 107 to a "remote pilot certificate with a small UAS rating."

In addition, as discussed below, this rule will create a new crewmember position of "remote pilot in command." The remote pilot in command will be a certificated airman and will have the final authority and responsibility for the operation and safety of a small UAS operation. Because the FAA anticipates that the remote pilot in command will often also be the person manipulating the flight controls of a small UAS, there is no need to have a separately defined crewmember position for the person manipulating the flight controls. Accordingly, the proposed definition of "operator" has been removed from this rule.

b. Remote Pilot in Command

The current regulations of part 91 create a separate PIC crewmember position that has ultimate authority and responsibility for the safety of the operation to: (1) Ensure that a single person on board the aircraft is accountable for the operation; and (2) provide that person with the authority to address issues affecting operational safety.[70] The NPRM proposed to forego this type of position in part 107, but invited comments as to whether a separate "operator in command" position should be created for small UAS operations.

Commenters including Aerius Flight, NetMoby, Predesa, and NRECA, generally agreed that a separate operator in command designation is not necessary for small UAS operations. NBAA commented that since small UAS operations will largely be excluded from airspace covered by traditional definitions of "operator" and "pilot," there is no need to create a separate operator in command position for part 107 operations.

Other commenters requested that the FAA include a separate "operator in command" position in the final rule similar to the PIC position used in manned-aircraft operations. The University of North Dakota's John D. Odegard School of Aerospace Sciences pointed out that due to a wide variety of system configurations available for small UAS, it is possible that one or more flight crew members or sensor stations may affect the flight path of the unmanned aircraft. Accordingly, the commenter recommended that the term operator-in-command be added and defined in the rule to reflect the final authority and responsibility for the operation and safety of the flight.

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[66] 14 CFR 1.1 (definition of "commercial operator").

[67] *See* 14 CFR 119.5(b).

[68] ICAO Manual on Remotely Piloted Aircraft (draft) Chapter 7 Personnel Competence.

[69] Unmanned Aircraft System Operations in UK Airspace—Guidance CAP 722.

[70] *See* 14 CFR 91.3.

ArgenTech Solutions, Inc. also recommended the rule address the title of operator-in-command and specify the requirements for operator hand-off of small UAS. Similarly, the Kansas State University UAS Program recommended clarification of responsibility in regard to operations with multiple operators and noted that creation of an operator-in-command designation would be an appropriate clarification.

As discussed below, this rule will allow small UAS to be operated by more than one person for purposes such as instruction or crew augmentation. As such, the FAA agrees that there needs to be a designated crewmember who is responsible for the safe operation of a small UAS and has final authority over that operation. Thus, this rule will create a new crewmember position of remote pilot in command.

Just as with manned-aircraft PICs, the remote pilot in command: (1) Must be designated as remote pilot in command before or during the flight; and (2) will have the final authority and responsibility for the operation. In light of this change, the FAA has amended the regulatory text of part 107 to transfer the duties that the NPRM proposed to impose on the operator to the remote pilot in command and, where appropriate, to the person manipulating the flight controls of the small UAS. The remote pilot in command will also be generally responsible for ensuring that the small UAS operation complies with all applicable FAA regulations.

Turning to the comments about operator hand-off, a person manipulating the flight controls of a small UAS may be augmented by another person during operation. Specifically, the person manipulating the flight controls may safely transfer the controls to another person during flight as long as the transfer does not violate the operational provisions of part 107 and a remote pilot in command is designated. For example, the flight controls of a small UAS may not be transferred if the process of transferring the controls would cause the unmanned aircraft to enter Class B airspace without ATC permission.

The FAA emphasizes that, as discussed in section III.E.2.a of this preamble, at any point throughout the entire flight of the small unmanned aircraft, the remote pilot in command and the person manipulating the flight controls of the small UAS must both have the ability to see the small unmanned aircraft unaided by any device other than corrective lenses. Therefore, the person manipulating the flight controls must be able to see the small unmanned aircraft at the time of the handoff sufficiently well to satisfy the visual-line-of-sight requirements of this rule. The FAA also emphasizes that § 107.19(c) requires the remote pilot in command to ensure that the small unmanned aircraft will not pose an undue hazard to other aircraft, people, or property on the ground if positive control is lost. Thus, the remote pilot in command must ensure that the technology and method used for conducting the handoff does not unduly increase the risk associated with a possible loss of positive control.

c. Airman Certification Requirement

The NPRM proposed to require that each person manipulating the flight controls of a small UAS obtain a part 107 airman certificate. The FAA's statute requires a person serving as an airman to obtain an airman certificate. Because the person manipulating the flight controls of a small UAS would be an airman under the crewmember framework proposed in the NPRM, that person would statutorily be required to obtain an airman certificate. The NPRM also proposed to create a new airman certificate to be issued for small UAS operations in place of the existing part 61 pilot certificates that focus on manned-aircraft operations.

Many commenters, including Air Tractor, Inc., Ag Info Tech, LLC, and the American Fuel & Petrochemicals Manufacturers, supported the proposal to require the person manipulating the flight controls of a small UAS to obtain a part 107 airman certificate. Commenters generally supported this provision because it was viewed as an economical means to achieve the rule's safety objective. Commenters including Modovolate and the National Association of Broadcasters stated the proposed approach of adding a new category of airmen provides a good balance with the need to verify operator qualifications without unduly burdening the operators.

Several commenters disagreed with the proposed airman certification requirement. Airship Technologies argued that an airman certificate is unnecessary to operate a small UAS and asserted that the proposed regulatory framework is too complex, costly, and burdensome for both the public and the FAA. Airship Technologies suggested that the operator should instead depend upon the product manufacturer's training in the form of classes and documented materials. Another commenter asserted that processing certificate applications will create a backlog for the FAA. Yet another commenter suggested a self-certification procedure in lieu of a required airman certificate asserting that the proposed certificate would offer little benefit to the operators or the NAS.

Commenters from the educational and academic community, including Princeton University and the Council on Government Relations, suggested that a remote-pilot-in-command position should allow a faculty member acting as a remote pilot in command to oversee student operators utilizing small UAS as part of a course or research activity. Princeton University expressed concern over requiring the person manipulating the flight controls of a small UAS to hold an airman certificate, citing complications in the academic environment. Princeton provided scenarios where students would use a small UAS in projects as part of their academic courses and the challenges involved in obtaining an operator certificate prior to testing their project. To resolve these concerns, Princeton recommended that universities be able to obtain an "Educational UAS License," which would give them the authority to designate an "Operator-in-Command" and administer the knowledge test to appropriate faculty and staff.

The FAA agrees with the majority of comments that an airman certificate to operate a small UAS should be required unless directly supervised by a remote pilot in command. This is in fact a statutory requirement, as 49 U.S.C. 44711(a)(2)(A) prohibits a person from serving in any capacity as an airman with respect to a civil aircraft used or intended to be used in air commerce "without an airman certificate authorizing the airman to serve in the capacity for which the certificate was issued." The FAA's statute defines an airman to include an individual "in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way." 49 U.S.C. 40102(a)(8)(A). Because the remote pilot in command and the person manipulating the flight controls of a small UAS without supervision are both pilots and members of the crew who navigate the small unmanned aircraft when it is under way, these crewmembers are statutorily required to have an airman certificate. The FAA therefore maintains the requirement that a person manipulating the flight controls of a small UAS without supervision must obtain a remote pilot certificate with a small UAS rating and this rule will also extend this requirement to the remote pilot in command.

However, the FAA acknowledges the educational concerns that have been raised by the academic commenters and notes that in the manned-aircraft context, an uncertificated person can manipulate the flight controls of an aircraft in flight as long as he or she is directly supervised. An individual whose manipulation of the flight controls is closely supervised by a certificated airman is not in command and is not a pilot or member of the crew because his or her presence is not necessary to fly the aircraft. Instead, the certificated airman who is providing the supervision is exercising the judgment that is normally expected of a pilot and that airman could simply fly the aircraft by him or herself instead. Thus, an individual who is directly supervised by a certificated airman is not an "airman" within the meaning of section 40102(a)(8)(A) and is therefore not statutorily required to obtain an airman certificate.

To further enable the educational opportunities identified by the commenters, this rule will allow the remote pilot in command (who will be a certificated airman) to supervise another person's manipulation of a small UAS's flight controls. A person who receives this type of supervision from the remote pilot in command will not be required to obtain a remote pilot certificate to manipulate the controls of a small UAS as long as the remote pilot in command possesses the ability to immediately take direct control of the small unmanned aircraft. This ability is necessary to ensure that the remote pilot in command can quickly address any mistakes that are made by an uncertificated person operating the flight controls before those mistakes create a safety hazard.

The ability for the remote pilot in command to immediately take over the flight controls could be achieved by using a number of different methods. For example, the operation could involve a "buddy box" type system that uses two control stations: One for the person manipulating the flight controls and one for the remote pilot in command that allows the remote pilot in command to override the other control station and immediately take direct control of the small unmanned aircraft. Another method could involve the remote pilot in command standing close enough to the person manipulating the flight controls so as to be able to physically take over the control station from the other person. A third method could employ the use of an automation system whereby the remote pilot in command could immediately engage that system to put the small unmanned aircraft in a pre-programmed "safe" mode (such as in a hover, in a holding pattern, or "return home").

The FAA also emphasizes that, as discussed in section III.E.3.b.ii of this preamble, part 107 will not allow a person to act as a remote pilot in command in the operation of more than one small unmanned aircraft at the same time. In the educational context, this means that a faculty member who is acting as a remote pilot in command could not directly supervise the simultaneous operation of more than one small unmanned aircraft. The faculty member could, however, instruct a class of students in a manner that does not involve the simultaneous operation of multiple small unmanned aircraft. For example, a class of students could operate a single small unmanned aircraft with students passing control of the aircraft to each other under the supervision of a faculty member who is a remote pilot in command. An academic institution could also require a certain number of students to obtain a remote pilot certificate prior to beginning a class involving small UAS use in order to increase the number of people who would be available to act as a remote pilot in command.

Several commenters, including the Utah Governor's Office of Economic Development and Textron Systems, expressed the view that there should be different small UAS certifications for different altitudes, locations, aircraft sizes, and applications.

The FAA recognizes there are differences between the various small UAS operations as articulated by the commenters. However, the key knowledge areas that will be tested on the initial and recurrent knowledge tests will be applicable to all small UAS operations that could be conducted under part 107 regardless of the altitude, location, size, or application of the small UAS. Requiring only a single remote pilot certificate with a small UAS rating will give the remote pilot in command the flexibility to operate various small UAS within the parameters permitted by part 107 without any additional FAA-required training or testing.

Many commenters, including ALPA, NAAA, and TTD, argued that small UAS operators should be required to have a part 61 pilot certificate to operate in the NAS. These commenters remarked that operating in the NAS is a great responsibility, and that all persons operating in the NAS should be aware of these responsibilities.

ALPA, TTD, Schertz Aerial Services, Inc., and many other commenters recommended that the FAA require a part 61 commercial pilot certificate. TTD stated that the standards put in place must ensure one level of safety for all who operate in the NAS, and if small UAS operators are operating for compensation or hire in shared airspace with manned aircraft, then they too should hold a commercial pilot certificate. Schertz Aerial Services added that small UAS pose a risk of collision or interference with manned aircraft and that UAS operators are not putting their own life at risk when flying. Schertz Aerial Services argued that the FAA should not carve out exceptions to the well-established requirement of commercial airman certificates for commercial operations.

NAAA and several other commenters suggested that, in place of a part 61 commercial pilot certificate, the FAA should require small UAS pilots to hold a part 61 private pilot certificate. NAAA stated that this position is a change from its section 333 exemption comments. After further analysis NAAA determined that requiring a commercial pilot certificate is not necessary and a private pilot certificate with a UAS knowledge and skills test rating would be sufficient to operate a UAS safely. Another commenter asserted that a UAS pilot should be required to have a part 61 student pilot certificate.

Many other commenters, including AIA, AOPA, and the National Association of Realtors, supported having a separate part 107 airman certificate. Commenters including the National Association of Wheat Growers, and the American Fuel & Petrochemicals Association stated that requiring a part 61 pilot certificate would be overly burdensome and pointed out that many of the knowledge areas and skills required for manned aircraft do not apply to the operation of unmanned aircraft.

The FAA agrees with the commenters who pointed out that the skills necessary to obtain a part 61 pilot certificate would not equip the remote pilot in command with all of the aeronautical skills necessary to safely operate a small UAS and would instead impose a significant cost burden without a corresponding safety benefit. Specifically, manned-aircraft training may not prepare a pilot to deal with UAS-specific issues such as how to maintain visual line of sight of the unmanned aircraft or how to respond when signal to the unmanned aircraft is lost.

Required training for a part 61 pilot certificate would, however, impose the burden of training on areas of knowledge that are inapplicable to small UAS operations. For example, unlike a manned-aircraft pilot, a remote pilot in command does not need to know how to operate the flight controls of a manned aircraft. Similarly, the remote pilot in command does not need to be able to takeoff, land, or maneuver a manned aircraft. While these skills are critical to the safe operation of manned aircraft and are thus required for a part 61 pilot certificate, they are not typically necessary for the safe operation of a small UAS. Because requiring a part 61 pilot certificate would not ensure that certificate applicants learn all areas of knowledge specific to small UAS operations while at the same time requiring those applicants to learn areas of knowledge that are not necessary to safely operate a small UAS, this rule will not require a remote pilot in command to obtain a part 61 pilot certificate.

Several commenters stated that despite the language of 49 U.S.C. 44711(a)(2)(A), the FAA should not require an airman certificate for small UAS operations conducted in rural areas on private property, and at low altitudes. One commenter stated that there is no statutory or regulatory requirement that a small UAS operator must be an airman given that part 103 operators need not have an airman certificate yet they fly in the NAS. Another commenter stated that the FAA was overly broad in its definitions of aircraft and air commerce. The commenter claimed the proposal ignored the flexibility FAA exercised in creating the regulations of 14 CFR part 101 regulating amateur rockets, kites, and unmanned free balloons. The commenter added that current part 101 regulations for these devices are safety-based and they appropriately make no artificial distinction between commercial and non-commercial use.

Several other commenters disagreed with the proposed certificate requirements, claiming they should not be applicable to hobbyists.

In response to the comment arguing that the FAA was overly broad in its definitions of aircraft and air commerce, the FAA notes that both terms are defined by statute. As discussed earlier, the NTSB has held that the statutory definition of "aircraft" is "clear on [its] face" and that definition encompasses UAS.[71] The NTSB has also held that, based on the statutory definition of air commerce, "any use of an aircraft for purpose of flight constitutes air commerce."[72]

Turning to the comments arguing that certain UAS operations should be exempt from airman certification, as discussed earlier, it is a statutory requirement, under 49 U.S.C. 44711(a)(2)(A), that a person may not serve as an airman with respect to a civil aircraft used or intended to be used in air commerce without an airman certificate. The statute does not distinguish between different types of operations, such as those suggested by the commenters. Accordingly, regardless of where and how a small UAS operation is conducted, this rule will require the person manipulating the flight controls of a small UAS to hold a remote pilot certificate unless he or she is directly supervised by a certificated remote pilot in command who has the ability to immediately take direct control of the small unmanned aircraft. However, as discussed in section III.C.4 of this preamble, operations of model aircraft as a hobby or for recreational use under the provisions of section 336 will not be subject to part 107. With regard to parts 101 and 103, those regulations are beyond the scope of this rule.

The Flight School Association of North America and Event 38 Unmanned Systems suggested that the airman certificate should include the operator's information and a color photo. Under this rule, the FAA will issue the same type of pilot certificate for the remote pilot in command as it does for all other airmen. The airman's specific information will be listed along with the date of issuance. At this time, the FAA does not issue airman certificates with a photo; however the FAA is addressing that issue through a separate rulemaking effort.

Event 38 Unmanned Systems suggested that the FAA create a database of registered airmen, but limit accessibility to FAA and law enforcement. NetMoby suggested allowing the public to access the database so they may confirm a person flying a small UAS in their vicinity is authorized to do so and assist in enforcement. Additionally, NetMoby suggested that the FAA use the current airman certificate database as the template for its suggested database.

The FAA currently maintains an airman certification database that permits the public to search or download through its public Web site. This information includes name, address, and certificates and ratings held by the certificate holder. The agency will issue remote pilot certificates in accordance with its existing processes for issuing airman certificates and the public will be able to search the airman certification database for those who hold a remote pilot certificate. The certificate holder may opt to request their address not be published on the public Web site.[73]

The University of North Dakota John D. Odegard School of Aerospace Sciences recommended that the FAA remove the "small UAS rating" from a part 107 airman certificate. The commenter stated that an additional small UAS rating is redundant because part 107 will apply only to small UAS operations.

As discussed in section III.A of this preamble, this rule is only one step of the FAA's broader effort to fully integrate all UAS operations into the NAS. Future agency actions are anticipated to integrate larger and more complex UAS operations into the NAS and integrating those operations may require the creation of additional UAS-specific airman certificate ratings. To accommodate these future actions, the FAA will retain the small UAS rating.

Textron Systems recommended establishing a small UAS certificate with appropriate category ratings (*e.g.*, rotorcraft or airplane) which would require documentation of aeronautical experience and a practical test prior to issuance. Textron stated the skills and knowledge required to operate unmanned rotorcraft and unmanned airplanes are substantially different during launch, semi-autonomous missions, and recovery, and therefore there should be a difference indicated on the certificate.

The category and class designations used for part 61 pilot certificates stem from the airworthiness certification designations given on the type certificate data sheet (TCDS) when an aircraft type becomes certificated. The TCDS identifies the airworthiness standards that a specific aircraft has met as those standards differ for different types of aircraft. However, as discussed in section III.J.3 of this preamble, small UAS operating under part 107 will not be required to obtain an airworthiness certificate. As such, there will be no airworthiness standards or a TCDS that will be issued for every small UAS design, and a category designation would not be workable under part 107.

One commenter recommended that the FAA require that the remote pilot certificate be displayed on a name badge, lanyard, or armband during a small UAS operation in case the remote pilot in command is approached or questioned about authorization for the activity.

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[71] *Administrator* v. *Pirker*, at 4–5, 8–12. A copy of the *Pirker* decision can be found at: *http://www.ntsb.gov/legal/alj/OnODocuments/Aviation/5730.pdf*.

[72] *Administrator* v. *Barrows*, 7 NTSB 5, 8–9 (1990).

[73] *http://www.faa.gov/licenses_certificates/airmen_certification/change_releasability/*.

The FAA emphasizes that § 107.7(a)(1) will require the remote pilot certificate holder to, upon request, make his or her remote pilot certificate available to the Administrator. This rule will not specify the method by which the certificate holder stores and displays his or her certificate, but whatever method is used, the certificate holder must provide the certificate to the FAA upon request.

d. Emergency Powers of a Remote Pilot in Command

In case of an in-flight emergency, the existing regulations in 14 CFR 91.3 give a PIC the power to deviate from the applicable FAA regulations to the extent necessary to respond to that emergency.[74] A PIC who exercises this power must provide a written report of the deviation to the FAA if requested to do so by the agency.[75] The NPRM proposed to not provide emergency powers to a small UAS operator because a small unmanned aircraft is highly maneuverable and much easier to land than a manned aircraft. Thus, the NPRM posited that in an emergency situation, an operator should be able to promptly land the small unmanned aircraft without needing to deviate from any part 107 regulations. The NPRM invited comments as to whether a small UAS remote pilot in command should be permitted to exercise emergency powers similar to those available to a PIC under § 91.3.

Several commenters including AUVSI, AIA, and Trimble Navigation, supported allowing small UAS operators to exercise emergency powers in certain circumstances. Prioria provided examples where a small UAS may need to violate the proposed 500-foot altitude limit and the visual-line-of-sight requirement in order to avoid a collision with a manned aircraft or remove an uncontrollable small unmanned aircraft from the NAS. Another commenter provided an example of a situation where the only viable option to prevent a mid-air collision would violate the prohibition on operations over people (as a result of any lateral movement by the UAS) or the various operational restrictions in § 107.51 (as a result of any vertical movement by the UAS). The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative noted that there are scenarios where unauthorized small UAS penetration of controlled airspace may be required to avoid an accident, and proposed that the FAA authorize small UAS operators to penetrate controlled airspace to the extent necessary to avoid (at least) personal injury or death.

One commenter said small UAS operators should be permitted to exercise emergency powers, but only to prevent serious injury, death, or a mid-air collision. Southern Company and Trimble recommended permitting UAS operators to deviate from FAA regulations in emergencies to mitigate injury, damage, or risk. Southern Company argued that by not extending emergency deviation authority to UAS operators, the FAA could be forcing a UAS operator to choose between deviating from FAA regulations and ensuring safety.

Several commenters, including Skycatch, Clayco, and AUVSI, specifically recommended revising proposed § 107.19 to be consistent with 14 CFR 91.3—*i.e.,* allow an operator to deviate from any rule of part 107 to the extent required in an emergency requiring immediate action, and require, upon the request of the Administrator, the operator to submit a written report of that deviation. Textron Systems said that 14 CFR 91.3 should apply to UAS, because an unmanned aircraft is considered an aircraft according to 49 U.S.C. 40102(a)(6). AIA said the provisions and intent of § 91.3 should apply to UAS.

Conversely, NBAA, Predesa, Planehook, and another commenter supported the FAA's proposal not to provide a remote pilot with the emergency powers available to a PIC under § 91.3(b). NBAA and Predesa concurred with the FAA's proposal but did not provide any additional justification. Planehook cited Articles 28 and 8 of the Convention on International Civil Aviation, which the commenter said creates the basis for nations to grant emergency powers to the PIC of an aircraft in distress, and Article 8, which the commenter said states that each contracting State undertakes to ensure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be controlled so as to obviate danger to civil aircraft. Planehook contended that the granting of emergency powers to operators of unmanned aircraft would violate this existing international agreement. One commenter argued that until UAS are able to communicate, operate accurately in controlled airspace, follow in-flight restrictions and spacing requirements, and fly specific altitudes and routes, emergency powers are unnecessary.

The FAA agrees with the commenters who pointed out that there are emergency scenarios in which a remote pilot may need to deviate from certain provisions of part 107, such as altitude and visual line of sight, to avoid an unexpected and unforeseen collision with a manned aircraft or a person on the ground. The FAA also agrees that in certain emergency situations it may be safer to deviate from one or more operational requirements of part 107 (*e.g.,* regarding altitude or controlled airspace) than attempt to land the small unmanned aircraft immediately. For example, if a manned aircraft approaches the small unmanned aircraft from below, the small unmanned aircraft may be unable to immediately descend and land without risking a collision.

Accordingly, during an in-flight emergency, this rule will allow the remote pilot in command to deviate from the provisions of part 107 to the extent necessary to respond to that emergency. As the FAA previously pointed out with regard to its emergency regulations, "the plain-meaning dictionary definition of an emergency is an unexpected and unforeseen serious occurrence or situation that requires urgent, prompt action." [76] Just as it does with other FAA regulations, this plain meaning will govern the agency's understanding of what constitutes an emergency for part 107 purposes.

Additionally, because part 107 will allow a deviation only during an in-flight emergency, this deviation cannot be taken for situations that were expected or foreseen prior to the takeoff of the small unmanned aircraft. If a remote pilot in command expects or foresees an emergency situation prior to aircraft takeoff, then the remote pilot in command must delay or cancel takeoff or otherwise alter the parameters of the operation to the extent necessary to ensure full compliance with part 107.

The FAA also emphasizes that the remote pilot in command must always prioritize the safety of human life above all other considerations. As such, the remote pilot in command may not endanger human life in order to save the small unmanned aircraft. To the contrary, the remote pilot in command is expected to sacrifice the small unmanned aircraft if it begins to pose a danger to human life.

The FAA further agrees with (and has included in this rule) the recommendation that, just like § 91.3, the remote pilot in command must, upon FAA request, submit a report to the FAA if he or she has exercised his or her emergency powers. This report must provide a detailed explanation of what happened. This requirement will enable FAA oversight over the exercise of emergency powers by giving the agency a method to better understand the circumstances and reasons that an individual remote pilot in command had for deviating from part 107.

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[74] 14 CFR 91.3(b).

[75] *Id.* § 91.3(b).

[76] Letter to George K. Shaefer from Donald Byrne, Assistant Chief Counsel, Regulations Division (April 16, 1993).

The FAA disagrees with the comment arguing that granting emergency powers to a remote pilot in command would violate U.S. international obligations. The FAA notes that Article 28 of the Convention of International Civil Aviation, which was the provision cited by the commenter, does not address the granting of emergency powers to remote pilots of unmanned aircraft. Article 8 of that Convention, which governs "Pilotless aircraft," states that:

"No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft."

The plain language of Article 8 does not prohibit a contracting State from giving emergency powers to a remote pilot in command operating within that State. Because neither Article 8 nor any other provision of the Convention of International Civil Aviation prohibits the granting of emergency powers to a remote pilot in command, this approach will not violate U.S. international obligations.

Several commenters addressed the issue of proper emergency training for small UAS operators. One commenter said that if small UAS operators have passed a reasonable operator license exam, they can indeed be trusted to behave well in an emergency situation. The NJIT Working Group said that remote pilots need to be properly trained so they will better understand what constitutes an emergency. Pointing to the NPRM's discussion of training small UAS pilots on emergency procedures, ALPA concurred with the need for training and recommended it include considerations in the exercise of emergency authority, however remote the likelihood of emergency may be.

The FAA concurs with commenters' points that small UAS pilots must be proficient in emergency procedures and the proper exercise of emergency authority. That is why, as discussed in section III.F.2.j of this preamble, emergency procedures and emergency authority will be tested on the initial and recurrent knowledge tests. Thus, in order to pass an initial knowledge test and obtain a remote pilot certificate, applicants for a remote pilot certificate will need to acquire proficiency in these areas of knowledge. UAS-specific exercises of emergency procedures and authority will also be included in the training course that part 61 pilot certificate[77] holders will be able to take instead of the initial and recurrent knowledge tests.

One commenter recommended that the FAA conduct further analysis before providing a small UAS pilot with emergency powers in the final rule. The FAA disagrees. Emergency powers have been a longstanding feature in FAA regulations without an adverse effect on safety because they allow the PIC to respond to an emergency situation in a context-specific manner.[78] As discussed earlier in this section, deviating from certain operational requirements may, at times, be unavoidable in order to minimize risk to other people.

Two commenters suggested that the FAA prescribe specific methods to respond to an emergency situation. One commenter stated that lost link is an emergency and should be declared to ATC or on Unicom to notify other air traffic. Another commenter similarly said small UAS operators should be required to send out a distress signal to aircraft within the vicinity if there is signal loss or other operational failures.

The FAA does not mandate a specific response to an emergency, as the safest response to an emergency situation may vary based on the surrounding context. For example, the safest response to an emergency situation in a rural area may differ from the safest response to the same situation in an urban area. As such, the FAA will not limit the remote pilot in command's ability to respond to an emergency situation in a context-appropriate manner. Rather, a remote pilot in command is permitted to respond as necessary to resolve the urgent situation. There is neither a requirement nor a prohibition from declaring an emergency, either by radio communication or by other means, if doing so is appropriate under the circumstances. For example, in a lost-link scenario, the remote pilot in command may declare an emergency if it appears that the small unmanned aircraft may hit a person on the ground. Conversely, lost link may not be an emergency if there are no people or manned aircraft near the area of operation.

The FAA also disagrees with the commenter who suggested that the remote pilot in command must be required to send out a distress signal if there is signal loss or other operational failures. Due to the limited operational capabilities of small UAS, an operation failure or signal loss may not necessarily constitute a hazard to persons or property.

2. See-and-Avoid and Visibility Requirements

To ensure that the person piloting the small UAS can safely see and avoid other aircraft and people and property on the ground, the NPRM proposed that small unmanned aircraft: (1) May only be operated within visual line of sight; (2) must yield right of way to all other aircraft; (3) may only be operated between the hours of sunrise and sunset; and (4) must meet minimum weather and visibility requirements.

a. Visual Line of Sight

Currently, 14 CFR 91.113(b) imposes a generally applicable requirement that, during flight, "vigilance shall be maintained by each person operating an aircraft so as to see and avoid other aircraft." This see-and-avoid requirement is at the heart of the FAA's regulatory structure, mitigating the risk of aircraft colliding in midair. This requirement is currently satisfied in manned-aircraft operations by a pilot on board the manned aircraft looking out from inside the aircraft to see whether other aircraft are on a collision course with the pilot's aircraft. However, the person controlling the small UAS cannot see other aircraft in the same manner because he or she is not inside the aircraft. That is why Public Law 112–95, section 333(b)(1) requires the FAA to consider, as a critical factor in this rulemaking, whether a small UAS operation is conducted "within visual line of sight."

To address this issue, the NPRM proposed that the operator of the small UAS must always be capable of maintaining visual line of sight of the small unmanned aircraft unaided by any technology other than glasses or contact lenses. The NPRM also proposed creating a new position of visual observer to assist the operator in maintaining visual line of sight. Under that proposal, if a visual observer is used in the operation, then the visual observer could watch the small unmanned aircraft instead of the operator. However, if a visual observer was not used in the operation, then the operator would have to exercise his or her visual-line-of-sight capability to watch the small unmanned aircraft.

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[77] For the purposes of this rule, references to "part 61 pilot certificate holders" specifically refer to holders of pilot certificates other than student pilot certificates, which include sport pilot, recreational pilot, private pilot, commercial pilot and air transport pilot certificates.

[78] *See, e.g.*, 14 CFR 91.3, 121.557, 121.559, 135.19.

As proposed in the NPRM, the operator or visual observer would have to be able to see the small unmanned aircraft throughout the entire flight in order to: (1) Know the unmanned aircraft's location; (2) determine the unmanned aircraft's attitude, altitude, and direction; (3) observe the airspace for other air traffic or hazards; and (4) determine that the unmanned aircraft does not endanger the life or property of another. The NPRM also proposed that even if a visual observer is used, at all times during flight, the small unmanned aircraft must remain close enough to the operator for the operator to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses.

For the reasons discussed below, this rule will make three changes to the NPRM visual-line-of-sight framework but will otherwise finalize it as proposed. First, because of the change in the small UAS crewmember framework (discussed in the previous section of this preamble), this rule will replace the operator with the person manipulating the flight controls of the small UAS and the remote pilot in command, who in many instances will be the same person. Second, this rule will make clarifying amendments to the regulatory text. Third, this rule will make the visual-line-of-sight requirement waivable.

A number of commenters expressed concern about whether the visual-line-of-sight framework proposed in the NPRM would sufficiently mitigate risk. Foxtrot Consulting, the Air Medical Operators Association, the Professional Helicopter Pilots Association, and several individuals asserted that the unaided human eye is not adequate to see and avoid other aircraft. Additionally, these commenters argued that the small unmanned aircraft will be too small to be seen by a manned-aircraft pilot, and, with no lighting requirement, the unmanned aircraft may be all but invisible, particularly in minimum visual-flight-rules (VFR) conditions.

Similarly, commenters, including A4A and several individuals, questioned whether small UAS remote pilots would be capable of perceiving potential conflicts and responsibly complying with the principle of "see and avoid." These commenters asserted that since small UAS are unmanned, they are inherently unable to comply with current "see and avoid" requirements of 14 CFR 91.113(b) in visual flight conditions. The commenters argued that a remote pilot may not have sufficient perceptual accuracy to determine whether or not a small unmanned aircraft is on a collision course with another aircraft.

The Human Factors and Ergonomics Society suggested that the FAA conduct a systematic, scientific study of factors that affect an observer's ability to estimate altitude and airspeed. A joint comment from Skycatch, Clayco, AECOM, and DPR Construction suggested that rather than relying merely on an operator's eyesight, the FAA should employ a risk-based approach to allowing operations.

The FAA recognizes that one of the issues with small UAS is that a person on the ground cannot see and avoid other aircraft in the same manner as a pilot who is inside a manned aircraft. The FAA also agrees that due to relative size of aircraft, a remote pilot will most likely be able to see and avoid a manned aircraft before the manned-aircraft pilot will see the small UAS. This issue is not unique to small UAS; manned vehicles currently in the NAS range from a few hundred pounds to 1.4 million pounds and pilots have similar challenges regarding see-and-avoid. The FAA has mitigated the risk in this rule through operational parameters that reduce the risk of a midair collision. Because of the limits on their access to airspace that is controlled or at higher altitudes, small unmanned aircraft will avoid busy flight paths and are unlikely to encounter high-speed aircraft that would be difficult for the remote pilot to see-and-avoid. Additionally, as discussed below, this rule will also specify minimum requirements for weather and visibility to maximize the remote pilot's ability to see incoming manned aircraft and avoid a collision with those aircraft.

The FAA disagrees with the notion that remote pilots operating under the visual-line-of-sight framework of this rule will be incapable of perceiving potential conflicts with other aircraft. In many cases, the remote pilot's perspective from the ground may be better than the perspective of a pilot onboard an aircraft because the remote pilot is not confined to a cockpit with vision obscured by the fuselage or flight control surfaces. The remote pilot is thus able to observe airspace 360° around the unmanned aircraft, including airspace above and below. Thus, the person maintaining visual line of sight will be able to see potential conflicts with manned aircraft. Furthermore, as discussed below, this rule will require the small unmanned aircraft to always yield the right of way to other users of the NAS.

Several commenters, including the News Media Coalition, NAMIC, and Drone Labs, LLC objected to the proposed limitation that visual line of sight must be maintained unaided by any technology other than corrective lenses. These commenters suggested that the rule allow the use of first-person-view (FPV) technology, arguing that available technologies have advanced to the point that operators can use FPV to meet or exceed the visual-line-of-sight requirements proposed in the NPRM. United Parcel Service (UPS) asserted that FPV technology has been safely and effectively used in the UAS hobbyist community for many years.

The Drone User Group Network stated that FPV operations should be permitted with mandatory use of a spotter. Predesa said that a wearable heads-up display that combines the FPV from the small UAS and a wider-angle view from a ground camera located near the operator may provide the same risk mitigation as that afforded by the visual observer. The University of Washington and a joint submission by the State of Nevada Governor's Office of Economic Development, the Nevada Institute for Autonomous Systems, and the Nevada FAA-designated UAS Test Site said that current FPV technologies offer a wider field of vision than the human eye. DJI stated that existing technology already provides superior orienting abilities over visual observers. One individual referenced a 2004 test conducted by NASA that indicated that FPV cameras mounted on pan-tilt gimbals can be used to scan virtually the entire airspace. This commenter also acknowledged FPV limitations ". . . such as the field-of-view of the camera (too wide provides less detail, too narrow limits situational awareness), total field-of-regard, clarity, and range of the transmitted video."

Some commenters, including the University of California, the National Roofing Contractors Association, and, AIA, stated that use of a FPV device should be allowed to meet the visual-line-of-sight requirements of this rule under certain circumstances, such as when other navigation and control technologies are available in the vehicle (*e.g.,* autonomous flight, onboard geo-fencing, sense-and-avoid technology) and mitigating measures are required (*e.g.* altitude, weight, location, and speed limitations, location or the use of visual observers). Exelon and Skyview Strategies said that FAA should include specific criteria or standards under which the technology would be allowed to be used, either alone or in conjunction with other technologies and procedures.

Other commenters supported the NPRM's proposed limitation on the use of technology to maintain visual line of sight. Commenters, including NAAA, ALPA, SkySpecs, and the U.S. Hang Gliding & Paragliding Association, pointed out that FPV technology remains unproven and unreliable and the FPV field of view is limited. ALPA specifically stated that "[t]he use of an on-board camera cannot replace the awareness provided by direct observation by the operator/pilot or designated visual observer."

FPV technology works by transmitting video feed from a camera carried by the small unmanned aircraft to the control station. The problem with relying on FPV technology for the ability to see and avoid other aircraft in the NAS is that an FPV camera's field-of-view is currently either very limited (narrow-field-of-view lens ≤30 degrees horizontal and 10 degrees vertical) or distorted (usually fish-eyed if using a wide-field-of-view lens). A narrow field-of-view lens poses a safety issue because it restricts the user's peripheral vision, which is used to detect incoming aircraft or other objects that may pose a safety hazard. A wide-field-of-view lens poses a safety issue because it reduces the angular resolution available to the user, making it necessary for an object in the monitor to be closer to the camera before it covers enough pixels for the remote pilot to be able to detect it. In addition, FPV relies on a video transmitter to broadcast the image to the remote pilot. These transmitter/receiver units are commonly available in several frequency bands from 900 MHz to 5.8 GHz, each frequency band having distinct advantages and disadvantages as to range, susceptibility to interference, and ability to penetrate foliage.

As of this writing, the FAA does not have validated data to indicate whether FPV can be used to safely conduct operations beyond visual line of sight and if so, what FPV performance specifications are required to support those operations. The FAA acknowledges that FPV cameras have been used by hobbyists for many years and that the technology is advancing rapidly within the growing industry. However, as discussed previously, FPV cameras have technical limitations and the FAA does not possess the data necessary to support a regulatory standard at this time.

The FAA also acknowledges the comments concerning technological or operational mitigations that could be used in conjunction with FPV. However, those mitigations have significant potential shortcomings that need to be explored prior to allowing them to be used in the NAS. For example, one of the commenters suggested the use of pan-tilt camera systems to mitigate for the shortcomings in FPV technology. While a pan-tilt system can allow a narrow-angle camera to scan a wider field of view, the system is still significantly inferior to the peripheral vision of the human eye, which can discern movement across the entire field of view, approaching 180 degrees in normal vision. Another commenter suggested the use of a wearable heads-up display. However, while a wearable heads-up display could possibly address some concerns about low-quality resolution present in wide-angle cameras, sharing the screen area with a second ground-based camera feed could further compound the resolution issue. Additionally, the ability for a camera to provide a wider field of view also generally carries with it the significant downside of needing increased radio bandwidth for the higher resolution video. This could make the video feed more susceptible to increased noise interference or it could reduce the angular resolution, affecting target discernibility.

While data on FPV technology and potential associated mitigations is currently limited, the FAA recognizes the potential for this technology to provide a means of operating a small UAS beyond visual line of sight. For this reason, the FAA is currently conducting a pathfinder initiative with BNSF Railroad to gather safety data on operating beyond the visual line of sight of the remote pilot in rural/isolated areas. The FAA is also conducting a second pathfinder initiative with PrecisionHawk to gather data on UAS flights in rural areas outside the remote pilot's direct vision. The FAA anticipates that data from these initiatives could help inform its approach to extend visual line of sight operations in future agency actions.

Further, to reflect the changing state of UAS technology and the limited data available at this time, the FAA has made the visual-line-of-sight requirements of this rule waivable. An applicant will be able to obtain a waiver for an operation conducted differently than what is required by the visual-line-of-sight requirements of part 107 if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver. The FAA also emphasizes that this rule does not prohibit the use of FPV devices as long as the device is not used to meet the visual-line-of-sight requirements of part 107.

Several commenters argued that small UAS operations should be permitted to go beyond visual line of sight when certain other technologies are used. Predesa argued that visual pattern recognition technology to detect terrain and aircraft hazards could be used to mitigate the risk associated with beyond-visual-line-of-sight operations. The Oregon Department of Aviation, the Agricultural Technology Alliance, and the New Hampshire Department of Transportation Bureau of Aeronautics (New Hampshire Department of Transportation), among others, asserted that utilizing geo-fencing to constrain unmanned aircraft flight should safely permit beyond-visual-line-of-sight operations. In addition to these, other technologies suggested by the commenters included light detection and ranging (LIDAR), Traffic Collision Avoidance System (TCAS), automatic dependent surveillance-broadcast (ADS–B), and automated navigation. The National Ski Areas Association noted that "collision detection and avoidance systems are in development," and said that the final rule needs to "recognize and accommodate" these and other technological innovations.

Many of the technologies suggested by the commenters only partially mitigate possible hazards. For instance, automated navigation and geo-fencing could protect against terrain and ground obstructions but would not reveal manned aircraft transiting the flight area. Conversely, TCAS could reveal transponder-equipped aircraft but would be ignorant of terrain or non-transponder-equipped aircraft. Some of the mentioned technologies, such as LIDAR and visual pattern recognition, have potential to detect both ground and airborne obstacles, but no commenters provided data to support a particular standard or a testing means to validate the ability and reliability of that technology. As of this writing, the FAA does not have sufficient data to find that a technology can safely satisfy the see-and-avoid requirement of part 107. Consequently, the FAA will consider these situations on a case-by-case basis through the waiver process. The FAA will also use the waiver process as one means by which to evaluate new technologies as they become more developed.

Commenters, including Boeing Commercial Airplanes (Boeing), News Media Coalition, the Newspaper Association of America, NAMIC, Amazon, and Google, argued that a visual-line-of-sight requirement is unnecessary over certain areas such as those that are unpopulated, private property, controlled-access facilities, or where activities would be unduly restricted by a visual-line-of-sight requirement, and that operational safeguards could be employed to ensure safe beyond-visual-line-of-sight operations. The types of unduly restricted activities could include newsgathering events where people must remain at a distance from the event, agriculture operations, underwriting or adjusting claims in dangerous locations, responses to natural disasters, firefighting, search and rescue, and law enforcement operations. The types of operational safeguards proposed could include operating under FAA-imposed restrictions on weight, range, location, and altitude; and operating along pre-programmed and pre-approved paths through the use of mapping, navigation, and contingency management software.

The FAA recognizes that the location of a small UAS flight could affect the inherent risk of the operation. However, as discussed previously, there is currently limited data concerning operations conducted beyond visual line of sight. The FAA is working to acquire additional safety data as part of its pathfinder initiatives, but that data will not be available within the timeframe envisioned by this rule. Because there are a significant number of variables involved in each individual operating environment and because the FAA has limited data on beyond-line-of-sight operations, this rule will not include a standard of general applicability for these types of operations. Instead, the FAA will consider each individual operating environment (as well as any mitigations) on a case-by-case basis as part of its consideration of a waiver application.

Several commenters, including the American Farm Bureau and the American Petroleum Institute, suggested that beyond-line-of-sight operations should be permitted over privately owned land where the operator would be able to close access to non-participants. These commenters provided examples of pipelines and utility lines.

The FAA recognizes that controlling the ground in the vicinity of the flight could mitigate hazards to persons and property on the ground. However, the primary concern underlying the visual-line-of-sight restriction in this rule is risk to other aircraft in the air. Because a property owner is generally limited in how much he or she can restrict other aircraft from operating near the property, the fact that a property is privately owned is not, by itself, sufficient to allow beyond-visual-line-of-sight operations. As discussed earlier, individuals wishing to operate beyond visual line of sight will be able to apply for a waiver, and the FAA will examine individual operating environments on a case-by-case basis as part of its evaluation of a waiver application.

AIA and JAM Aviation suggested that the first sentence of § 107.31 should be amended to read: "With vision that is unaided by any device other than corrective lenses, the operator *and* visual observer must be able to see the unmanned aircraft throughout the entire flight." One individual stated § 107.31(b) should be amended to read: "Determine the unmanned aircraft's attitude, altitude, and direction of flight." The commenter said the change is needed because for multi-rotor UAS, the direction of flight could be quite different from the nominal "front" of the aircraft. According to this commenter, the proposed wording could lead to confusion on what "direction" meant, whether it was the UAS's path or the direction (bearing) from the remote pilot's position.

As an initial matter, the FAA notes that, as discussed in section III.E.1 of this preamble, the NPRM-proposed position of operator has been replaced by the remote pilot in command. Additionally, the remote pilot in command is not required to be the person who manipulates the flight controls of the small UAS. Accordingly, this rule will require both the remote pilot in command and the person manipulating the flight controls of the small UAS to possess the ability to maintain visual line of sight of the small unmanned aircraft.

In response to the concerns raised by the commenters, the FAA has also clarified the regulatory text of § 107.31. As amended, § 107.31 states that the remote pilot in command, the visual observer (if one is used), and the person manipulating the flight control of the small UAS must be able to see the unmanned aircraft throughout the entire flight in order to: (1) Know the unmanned aircraft's location; (2) determine the unmanned aircraft's attitude, altitude, and direction of flight; (3) observe the airspace for other air traffic or hazards; and (4) determine that the unmanned aircraft does not endanger the life or property of another. This visual-line-of-sight ability must be exercised throughout the entire flight of the small unmanned aircraft by either: (1) The visual observer; or (2) the remote pilot in command and person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command).

Several commenters, including Modovolate, Small UAV Coalition, and Southern Company, asked the FAA to make clear that brief interruptions to visual line of sight should be permitted. One commenter asked that a quantitative limit on what qualifies as a momentary interruption should be established. Another individual asked the FAA to make clear that the remote pilot's primary mission is to scan the area for other aircraft and not to keep "eyes on" the small unmanned aircraft.

The FAA understands and accepts that the person maintaining visual line of sight may lose sight of the unmanned aircraft for brief moments of the operation. This may be necessary either because the small unmanned aircraft momentarily travels behind an obstruction or to allow the person maintaining visual line of sight to perform actions such as scanning the airspace or briefly looking down at the small UAS control station. For example, a remote pilot in command stationed on the ground utilizing a small unmanned aircraft to inspect a rooftop may lose sight of the aircraft for brief periods while inspecting the farthest point of the roof. As another example, a remote pilot in command conducting a search operation around a fire scene with a small unmanned aircraft may briefly lose sight of the aircraft while it is temporarily behind a dense column of smoke.

However, the FAA emphasizes that even though the remote pilot in command may briefly lose sight of the small unmanned aircraft, he or she always has the see-and-avoid responsibilities set out in §§ 107.31 and 107.37. The circumstances of what would prevent a remote pilot from fulfilling those responsibilities will vary depending on factors such as the type of UAS, the operational environment, and distance between the remote pilot and the unmanned aircraft. For this reason, the FAA declines to specify a quantitative value to an interruption of visual contact as it would have the effect of potentially allowing a hazardous interruption or prohibiting a reasonable one.

With regard to the comment concerning keeping "eyes on" the small unmanned aircraft, the FAA notes that the principles of scanning, long taught to manned aircraft pilots, include the dangers of "tunnel vision" and that an effective scan must encompass all areas of the environment a hazard could come from. The FAA agrees that to comply with § 107.31, the person maintaining visual line of sight must effectively scan the area and not necessarily be focused on constant visual contact with the small unmanned aircraft.

Several commenters suggested that the FAA impose a numerical limit on how far away a small unmanned aircraft may travel from the person maintaining visual line of sight. ALPA, NBAA, NAAA, and the State of Nevada, Nevada Institute for Autonomous Systems and Nevada FAA-designated UAS Test Site, commenting jointly, argued that an appropriate specific numerical distance should be imposed and be based on study or test data. Predesa stated that a numerical limit can be determined by the performance of the UAS, taking into account a margin that allows for winds and wind gusts, and power characteristics of the UAS battery. FLIR Systems, Inc., Aviation Management, the City and County of Denver, Colorado,[79] and two individuals proposed specific numerical limits the FAA should impose on the area of operation. The numerical recommendations of these commenters varied widely from 1000 feet to 3 miles. An individual commenter suggested that some form of reliable and verifiable documenting of distance should be required.

The FAA declines to impose a numerical limit on how far away a small unmanned aircraft can travel from the person maintaining visual line of sight. A prescriptive numerical limit would not take into account situational-dependent operating factors and may preclude operations that could otherwise be conducted safely. Additionally, no commenter provided data to substantiate the belief that a numerical standard would provide a higher level of safety than the visual-line-of-sight standard proposed in the NPRM.

This rule will also not include a documentation requirement regarding the distance of a small unmanned aircraft. A distance documentation requirement would impose an unjustified cost on the public because the permissible distance of the small unmanned aircraft from the remote pilot in command will be situation-specific. For example, a remote pilot in command operating in excellent visibility conditions will be able to fly the small unmanned aircraft farther away from him or herself and still maintain visual line of sight. Conversely, a remote pilot in command operating in poorer visibility conditions will have a more limited area where he or she can fly the small unmanned aircraft and still maintain the required visual line of sight.

PlaneSense, Inc. and Cobalt Air, LLC, in a joint submission, stated that the rule should also require that the operator or a visual observer have line of sight to the ground over which the small unmanned aircraft is flying. However, requiring a remote pilot or visual observer to have line of sight to the ground will not enhance the safety of this rule, and may prohibit certain operations that could otherwise be conducted safely under part 107. For instance, a small UAS operation over a disaster area containing no persons or property on the ground would not need to have line of sight to the ground to ensure the safe operation of the small UAS.

Airports Council International—North America suggested that the first sentence of § 107.31 should be amended to read: "With vision that is unaided by any device other than corrective lenses, the operator or visual observer must be able to see the unmanned aircraft *and other aircraft to which the unmanned aircraft could pose a collision risk* throughout the entire flight in order to . . . ."

The FAA declines this suggestion because the requirement to be aware of other aircraft is already encompassed by the pertinent regulatory text of part 107. Specifically, § 107.31(a)(3) will require the remote pilot in command, the visual observer (if one is used), and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) to be able to see the unmanned aircraft throughout the entire flight in order to observe the airspace for other air traffic or hazards. Other aircraft are considered air traffic and are thus covered by the regulatory text of § 107.31(a)(3).

The Washington State Department of Transportation, Aviation Division concurred "with the line-of-sight and reduced visibility parameters as described, with the exception that certain verified research and development operations . . . be allowed on a case-by-case basis, and for unique situations such as aerial observation to support firefighting where redundant systems may alleviate line-of-sight and visibility limitations."

As an initial matter, the FAA notes that operations, such as those in support of firefighting, will not be subject to the provisions of part 107 if conducted as public aircraft operations. With regard to case-by-case determinations, the visual-line-of-sight restrictions of this rule will be subject to waiver. This means that a person will be able to apply for and obtain a certificate of waiver from the provisions of § 107.31 if the person establishes that the proposed operation can safely be conducted under the terms of a certificate of waiver. The FAA will evaluate waiver requests on a case-by-case basis.

Commenters including several state farm bureau federations and FLIR Systems argued that a visual-line-of-sight requirement could potentially negate the cost and time savings associated with small UAS operations conducted over large swaths of land because the requirement would necessitate multiple flights to complete the operations. According to these commenters, the potential safety risks associated with operations would also increase because more frequent takeoffs and landings would be required.

The commenters did not provide any data showing that there is increased risk or costs associated with the takeoff or landing of a small unmanned aircraft. As such, the FAA declines to change this rule on the basis suggested by the commenters. However, as discussed in sections III.E.1 and III.E.3.a.i of this preamble, this rule has been changed from the NPRM to allow: (1) The flight of a small unmanned aircraft over a sparsely populated area from a moving vehicle; and (2) a remote pilot in command to extend the area of operation by handing off control mid-flight to another remote pilot in command. Both of these changes, as well as the ability to apply for a waiver, will allow for additional operational flexibility under this rule.

A large number of commenters, including the Airborne Law Enforcement Association, Embry-Riddle Aeronautical University, and the Associated General Contractors of America, argued that visual line of sight should not apply to certain specific operations. Those operations included:

- Public safety/emergency.
- Conservation-focused operations.
- Operations by electric utilities for line inspection or for storm-damage restoration.
- Oil industry inspections.
- Property inspections.
- Agriculture.
- Newsgathering.
- Operations within a structure.

As an initial matter, the FAA does not regulate UAS operations conducted inside an enclosed structure. Similarly, as discussed earlier in this preamble, part 107 will not apply to public aircraft operations unless they voluntarily choose to operate as civil aircraft. Most public safety operations are conducted as public aircraft operations and will continue to be authorized by COA. Therefore, these types of operations, when conducted in accordance with a COA, will be unaffected by the requirements of part 107.

With regard to the other operations suggested by the commenters, there is currently no data indicating that the nature of the small UAS operation mitigates the risk associated with operations conducted beyond visual line of sight. The FAA recognizes that there are a variety of uses for UAS that this rulemaking will not enable. However, there are also a number of small UAS uses that will be enabled by this rule. If the FAA were to delay issuance of this rule until it had sufficient data to generally allow beyond-visual-line-of-sight operations, the societal benefits that could be realized by immediately allowing operations within visual line of sight would be delayed as well. Thus, the FAA will utilize the incremental approach discussed earlier in this preamble, under which the FAA will issue a rule for the lowest risk UAS activities while pursuing future rulemaking to expand their use. Additionally, as discussed previously, the waiver authority in this rule will enable the FAA to examine, on a case-by-case basis, any mitigation provided by the operating environment in the specific operations discussed by the commenters.

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[79] This commenter submitted comments on behalf of its Department of Aviation, owner and operator of Denver International Airport.

A number of commenters, including the National Roofing Contractors Association, Vail Resorts, Rocky Mountain Farmers Union, and MAPPS, suggested that small UAS operators should be permitted to extend their visual line of sight through the use of one or more visual observers who maintain visual line of sight while in constant communication with the operator. Continental Mapping Consultants, Inc. (Continental Mapping) similarly advocated for the use of one "or many" remote visual observers "daisy chained" throughout the operational area, while in constant contact with each other and the operator. The National Association of Broadcasters, the National Cable & Telecommunications Association, and Radio Television Digital News Association also asked the FAA to reconsider its proposed prohibition on a relay or "daisy chain" of visual observers. Specifically, the commenters said that the FAA should revise § 107.33(b) to require that either the operator or a visual observer be able to see the small UAS at all points during the flight.

The Colorado Cattlemen's Association asserted that "adequate operational and public safety can be ensured" if operator visual line of sight is augmented by an additional visual observer who maintains visual line of sight while in communication with the operator. The association did not advocate for an "extensive or unlimited number" of observers to extend the range of UAS operations, but said a reasonable balance can be reached to allow more practical uses of UAS (such as operations on cattle ranches).

Allowing remote pilots to extend their visual line of sight through the use of one or more visual observers may introduce new hazards into the operation. As discussed in the next section of this preamble, the visual observer's role in the operation is limited to simply maintaining visual line of sight and communicating what he or she sees to the remote pilot. Allowing "daisy chaining" of visual observers to fly the unmanned aircraft beyond line of sight of the remote pilot in command would result in a delay in the remote pilot's reaction time because the visual observer would have to verbalize any hazard and the remote pilot would be unable to look up and directly see the situation. Instead, the remote pilot would have to respond to the hazard by formulating and executing a maneuver based on his or her understanding of the information received from the visual observer rather than a direct visual perception of the hazard.

Because a delay in reaction time may introduce new hazards into the operation, this rule will retain the requirement that the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) must be able to see the small unmanned aircraft throughout the entire flight. However, as discussed earlier, the visual-line-of-sight requirements of this rule will be waivable. Additionally, the FAA notes that it is currently engaged in research and testing on how a communication error could affect the ability of the remote pilot to correctly apply avoidance maneuvers, and this data will help inform future agency actions.

Textron Systems, the National Association of Realtors, Trimble Navigation, and ArgenTech Solutions recommended that this rule provide an operator with the ability to hand off control and responsibility for flight during the course of an operation. Textron Systems recommended that the rule "allow passing of 'operator in command' during flight operations as long as the system and the operational construct meet other requirements of the rule." Trimble proposed that the FAA should explicitly permit multiple operators using networked radios and control stations to operate a single UAS. Under Trimble's proposal, operators would transition control of the UAS from one operator to another while ensuring see-and-avoid concerns are met. Trimble also asserted that the technology needed to network radios and control stations is utilized in other countries for small UAS operations and has been found to be effective. The National Association of Realtors added that "daisy chaining" operators does not pose a safety concern because "[t]he real-time corrections necessary to perfect an UAS flight could be made instantaneously, rather than the observer communicating with the operator and there being a lag in the time the correction is orally given and then made within the operation." NetMoby, on the other hand, recommended prohibiting hand-off ability because it could create an "endless daisy chain of operators."

The FAA agrees with the commenters who stated that transfer of control of a small UAS should be allowed between certificated remote pilots. This can be accomplished while maintaining visual line of sight of the UAS and without loss of control. Multiple certificated remote pilots handing off operational control does not raise the same safety concerns as a daisy chain of visual observers because, unlike a visual observer, the remote pilot in command will have the ability to directly control the small unmanned aircraft. Thus, two or more certificated pilots transferring operational control (*i.e.* the remote pilot in command designation) to each other does not raise the delayed-reaction-time issue that arises with visual observers having to communicate what they see to another person who actually manipulates the small UAS flight controls.

Accordingly, as discussed in section III.E.1 of this preamble, multiple certificated remote pilots may choose to transfer control and responsibility while operating a small UAS. For example, one remote pilot may be designated the remote pilot in command at the beginning of the operation, and then at some point in the operation another remote pilot may take over as remote pilot in command by orally stating that he or she is doing so. The FAA emphasizes that as the person responsible for the safe operation of the UAS, any remote pilot who will assume remote-pilot-in-command duties should be aware of factors that could affect the flight.

b. Visual Observer

For the reasons discussed below, this rule will finalize the position of visual observer as follows. First, this rule will define a visual observer as a person who assists the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) to see and avoid other air traffic or objects aloft or on the ground. Second, the visual observer will remain an optional crewmember who will not be required to obtain an airman certificate. Third, the remote pilot in command will have to ensure that the visual observer is positioned in a location that allows him or her to see the unmanned aircraft in the manner specified in § 107.31. Fourth, the visual observer, the remote pilot in command, and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) will be required to coordinate in order to: (1) Scan the airspace where the small unmanned aircraft is operating for any potential collision hazard; and (2) maintain awareness of the position of the small unmanned aircraft through direct visual observation. Finally, this rule will require the visual observer, the remote pilot in command, and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) to maintain effective communication, and it will allow the use of technology, such as radios, to assist with the communication.

i. Definition of Visual Observer

The NPRM proposed to define a visual observer as a person who assists the operator to see and avoid other air traffic or objects aloft or on the ground. Skycatch suggested that the definition of visual observer should be revised to say "sense and avoid" rather than "see and avoid" because the term "sense and avoid" is the term required by Congress. According to Skycatch, the term "see and avoid" does not appear in Public Law 112–95, whereas the term "sense and avoid" appears in three locations in the enabling legislation.

As discussed earlier, this rulemaking is being conducted under section 333 of Public Law 112–95. Subsection 333(b)(1) requires the FAA to determine, in pertinent part, what type of UAS operations do not "create a hazard to users of the national airspace system." A critical component of that determination is whether the operation is conducted "within visual line of sight." *Id.* Section 333 does not use the term "sense and avoid."

As discussed in the previous section, the FAA does not currently have data indicating that small UAS technology has matured to the point that would safely allow small UAS to be operated beyond visual line of sight. To reflect this fact, as well as the fact that section 333 explicitly focuses on operations within visual line of sight as a critical consideration, this rule will retain the proposed "see and avoid" terminology in the definition of visual observer. Accordingly, this rule will define visual observer as a person who assists the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) to see and avoid other air traffic or objects aloft or on the ground.

ii. Operational Requirements When Using Visual Observer

The NPRM also proposed a set of operational requirements for operations that use a visual observer. First, the operator and visual observer would be required to maintain effective communication with each other at all times. Under the NPRM, the operator and visual observer would not have to stand close enough to hear each other without technological assistance; instead, they could use a communication-assisting device, such as a radio, to communicate while standing farther apart from each other. Second, the operator would be required to ensure that the visual observer be positioned in a manner that would allow him or her to maintain visual line of sight of the small unmanned aircraft. Third, the operator and visual observer would be required to coordinate to: (1) Scan the airspace where the small unmanned aircraft is operating for any potential collision hazard; and (2) maintain awareness of the position of the small unmanned aircraft through direct visual observation. This rule will finalize the above provisions as proposed, but, due to the change in the crewmember framework, this rule will refer to the remote pilot in command and the person manipulating the flight controls of the small UAS instead of "operator."

Approximately 20 organizations and 8 individual commenters, including NRECA, AIA, and the Association of American Universities and the Association of Public Land-grant Universities, commenting jointly, agreed with the NPRM proposal that the visual observer should not be required to stand close enough to the operator to allow for unassisted verbal communication. These commenters generally agreed that the operator and visual observers should maintain effective communication with one another and added that effective communication can be achieved with the use of technology, such as a two-way radio or cell phone. NRECA stated that there is no additional safety benefit from requiring the visual observer to stand close enough to the operator to allow for unassisted verbal communication. In fact, NRECA continued, such a requirement might negatively impact safety by prohibiting a visual observer from adopting a vantage point that affords a different field of view from the operator (*i.e.*, a field of view that complements and is not merely duplicative of the operator's field of view).

Aviation Management, NBAA, and NRECA further stated that the method of effective communication should be decided by the operator and visual observer. Planehook and an individual added the operator and visual observer should have a contingency plan if electronic communications fail.

ALPA supported the use of communication-assisting devices, but asked the FAA to State (in the preamble and in advisory material) that the ability to maintain communication using any device is necessarily complicated by the fact that the pilot/operator typically uses both hands to control the small UAS. ALPA asserted that this complication limits the possibilities of using assisting devices considerably, essentially to two-way radiotelephony with a constant (*i.e.*, "hot") transmit-receive capability.

In contrast to the above commenters, the Colorado Agricultural Aviation Association and NAAA said that the visual observer should be able to communicate with the UAS operator "from the most minimal distance possible."

This rule will require the remote pilot in command, the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command), and the visual observer to maintain effective communication, but it will also allow the remote pilot in command to determine how that communication will take place. The FAA agrees that effective communication is essential, but there are circumstances where this can be accomplished at a distance through technological assistance. As the commenters pointed out, effective communication at a distance can easily be achieved using existing technology, such as a two-way radio or a cell phone.

In response to ALPA's concern that the person manipulating the small UAS flight controls may be unable to simultaneously manipulate the controls of a communication device, the FAA notes that existing technology provides a number of options for hands-free communication, such as an earpiece, a headset, or the "speaker" mode on a cell phone. The remote pilot in command may choose any communication-assisting technology as long as that technology: (1) Allows for effective communication; and (2) does not interfere with the safe operation of the small UAS. The FAA also agrees that the choice of effective communication should be agreed upon by the remote pilot in command and the visual observer, and that it is a good safety practice to have a contingency plan.

The National Association of Broadcasters, the National Cable & Telecommunications Association, Radio Television Digital News Association, and MPAA asserted that proposed § 107.33(b) conflicts with the visual-line-of-sight requirements of § 107.31. These commenters asserted that proposed § 107.31 stated that either "the operator *or* visual observer must be able to see the unmanned aircraft throughout the entire flight" (emphasis added). However, proposed § 107.33(b) stated that when a visual observer is used, "[t]he operator must ensure that the visual observer is able to see the unmanned aircraft."

As explained earlier, the visual-line-of-sight framework requires the remote pilot in command, the person manipulating the flight controls of the small UAS, and the visual observer to always have visual-line-of-sight capability. The visual observer can exercise this capability instead of the remote pilot in command and person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command), but under this rule, everyone must have the visual-line-of-sight capability, even if they are not exercising it. As noted earlier, the visual observer cannot maneuver the small unmanned aircraft, so there is a potential delay in response time if the person manipulating the flight controls and the remote pilot in command are unable to see what is happening and must rely solely on the description provided by the visual observer. The FAA agrees with commenters that, as proposed, the regulatory text of § 107.31 was unclear because it implied that either the operator or visual observer (but not both) had to be positioned in a manner that allowed for visual line of sight. Accordingly, the FAA has amended the regulatory text of § 107.31 to clarify that all crewmembers must have the ability to maintain visual line of sight.

One commenter suggested that the visual observer should be required to stand close enough to the operator that the line of sight of the visual observer will not deviate from the operator's line of sight when the operator is using an FPV device. Another commenter objected to the proposed requirement that a visual observer must be positioned in a way that allows them to always maintain visual line of sight. The commenter asserted that this requirement would significantly limit the operational area for operations that use multiple visual observers because the small unmanned aircraft could only be flown in an area where the visual observers' individual lines of sight overlap so that each observer could satisfy the proposed line-of-sight requirement.

The FAA declines to add a requirement that the visual observer must stand close enough to the remote pilot in command to have the same visual line of sight. The remote pilot in command, the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command), and the visual observer will be able to satisfy their see-and-avoid responsibilities if they are each positioned in a manner where they have sufficient visual line of sight of the unmanned aircraft and surrounding airspace (as specified in § 107.31). This can be accomplished without each person having the same exact line of sight as the other people involved in the operation. The FAA also emphasizes that even though part 107 will not prohibit the use of an FPV device by the remote pilot in command, FPV may not be used to meet the visual-line-of-sight requirements of this rule.

With regard to the use of multiple visual observers, the FAA acknowledges the concern raised by the commenter. As noted by the commenter, § 107.33(b) requires that when a person is acting as a visual observer, he or she must be positioned in a location where he or she can perform the visual-line-of-sight duties of the visual observer. However, this rule does not require that a person remain in the role of a visual observer for the entire duration of the small UAS operation. When a person is not acting as a visual observer, he or she is not required to perform the duties of a visual observer and need not be placed in a location where he or she can maintain visual line of sight of the small unmanned aircraft. This provides significant operational flexibility because the remote pilot in command can activate and deactivate pre-positioned visual observers to assist with maintaining visual line of sight. The FAA emphasizes, however, that the remote pilot in command is responsible for the small UAS operation and must ensure that any hand-off of visual observer responsibility is done safely and in compliance with §§ 107.31 and 107.33.

TTD asked the FAA to clarify the proposed requirement that the operator and visual observer must coordinate so that they "maintain awareness of the position of the small unmanned aircraft through *direct visual observation.*" (Emphasis added.) TTD pointed to an NPRM statement that it would be permissible for one's line of sight to be temporarily obstructed by an object and asked the FAA to clarify when and to what degree obstruction of one's visual observation is permitted under § 107.33(d)(2).

As discussed in the previous section of the preamble, this rule allows for the possibility that the person maintaining visual line of sight may briefly lose sight of the small unmanned aircraft. As noted in that section, the FAA declines to impose quantitative limits on visual-line-of-sight interruptions. Instead, an interruption to line-of-sight of the small unmanned aircraft is permissible if: (1) It is brief; and (2) the person maintaining visual line of sight is still capable of complying with the see-and-avoid responsibilities of §§ 107.31, 107.33 (if applicable), and 107.37.

iii. Optional Use of a Visual Observer

Under the proposed rule, a visual observer would be an optional crewmember who could be used to augment the small UAS operation. For the reasons discussed below, this rule will finalize this NPRM provision as proposed.

Several commenters argued that a visual observer should always be required in order to satisfy the visual-line-of-sight requirements of part 107. ALPA and TTD asserted that small unmanned aircraft are difficult to observe given their size and speed capabilities, and that this difficulty, combined with the remote pilot's need to look down at the controls periodically, makes a visual observer a critical crewmember for the safe operation of a small unmanned aircraft. Similarly, NAAA stated that the FAA's proposal not to require a visual observer is at odds with the fundamental see-and-avoid and visual-line-of-sight principles of the rule. NAAA argued that the NAS would be endangered by the absence of a visual observer in those situations in which the remote pilot temporarily lacks the ability to see and avoid other aircraft.

Several commenters stated that in the absence of a visual observer, a remote pilot would not be able to maintain situational awareness of activities in the air and on the ground. JAM Aviation stated that a remote pilot cannot easily monitor conditions in the air and on the ground simultaneously, and that a visual observer is needed to assist the remote pilot in doing so. Texas A&M University-Corpus Christi Lone Star

UAS Center of Excellence & Innovation (Texas A&M University-Corpus Christi/ LSUASC) stated that a visual observer should be required until technology comes into existence, such as first-person view, that would provide "situational awareness and [a] level of risk-mitigation comparable to that of a pilot in the cockpit of a commercial aircraft." Similarly, another commenter argued that a visual observer should be required "unless some form of situational awareness aid is available which would allow the operator to simultaneously determine [small UAS] status and health as well as scan the surrounding airspace[.]"

It is not necessary to require a visual observer for all small UAS operations. Under the visual-line-of-sight framework of this rule, a visual observer can act as a limited substitute for the remote pilot in command and the person manipulating the flight controls with regard to maintaining visual line of sight of the small unmanned aircraft. The visual observer position will allow the person manipulating the small UAS flight controls and the remote pilot in command to perform tasks that require looking away from the small unmanned aircraft for a significant period of time or use observational technology (such as FPV) that limits their peripheral vision; which they can do if a visual observer is present because the visual observer will observe the small unmanned aircraft with the naked eye.

However, there are some small UAS operations in which the person manipulating the UAS flight controls (if that person is not the remote pilot in command) and the remote pilot in command will simply observe the small unmanned aircraft themselves throughout the entire operation. In those types of operations, there is no need for a visual observer to be present to maintain visual line of sight of the unmanned aircraft. In response to concerns about the ability of the remote pilot to maintain see and avoid if there is no visual observer present, the FAA notes that, as discussed previously, the person maintaining visual line of sight will have the same (if not better) ability to see and avoid other aircraft as a manned-aircraft pilot looking out the windshield of the manned aircraft. The fact that the person maintaining visual line of sight may briefly look away from the small unmanned aircraft to conduct other tasks such as scanning the surrounding airspace does not affect this conclusion because the "look away" will be brief. This situation is similar to manned-aircraft operations where a pilot can look away from the windshield to conduct another task such as scanning or manipulating the instrument panel.

As such, this rule will not require that a visual observer be present in all small UAS operations conducted under part 107. The FAA emphasizes, however, that if a visual observer is not present, then the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) must be the ones to exercise the visual-line-of-sight capability required by § 107.31. The FAA also emphasizes that the remote pilot in command will ultimately be responsible for the safe conduct of the small UAS operation. If the remote pilot in command determines, as part of the preflight assessment of the operating area required by § 107.49, that his or her particular small UAS operation cannot be conducted in a safe manner without a visual observer, then the remote pilot will be obligated to conduct the flight with a visual observer.

One commenter stated that the operation of a small unmanned aircraft is too complex to be conducted by just one person, and that a visual observer is needed to share the duties. According to this commenter, a visual observer should be used to "assist the operator focusing on monitoring aviation air band radio transmissions, flight heights, distances, see-avoid aircraft requirements, spotting, etc."

The FAA disagrees with the suggestion that the operation of a small UAS is too complex to be conducted by one person. Many small UAS operating under this rule are simple to control and will be limited to a confined area of operation. The remote pilot in command is responsible for the safe operation of the flight and can make a determination as to whether a visual observer or another certificated remote pilot is necessary based on the nature of the operation. For example, a remote pilot operating a small unmanned aircraft in a sparsely populated area at an altitude lower than nearby trees and buildings could safety conduct the operation without any other crewmembers.

iv. No Airman Certification or Required Training of Visual Observer

The NPRM proposed to not require airman certification or other mandatory testing or training for a visual observer. The FAA explained that because a visual observer would not be permitted to exercise independent judgment or operational control and because the visual observer's role in the operation would be limited simply to communicating what he or she is seeing to another person, the visual observer would not be an airman as defined by statute and would therefore not be statutorily required to obtain an airman certificate. The NPRM also explained that because of the limited role of the visual observer, there would be no need to exercise the FAA's regulatory authority to require the visual observer to obtain an airman certificate.[80] For the reasons discussed below, this rule will not require visual observers to be certificated or to satisfy any other qualification requirements.

Several commenters expressed support for the FAA's proposal to not require airman certification for visual observers on the basis that certification is unnecessary. Many submissions, including those from NRECA, the Nez Perce Tribe, and the National Association of Realtors, supported the FAA's proposal because a visual observer is optional for part 107 operations and is not responsible for operating the device. The Property Drone Consortium, NetMoby, Predesa, the National Association of Wheat Growers, and the American Petroleum Institute generally commented that a visual observer should not have to satisfy airman requirements. The Professional Society of Drone Journalists added that the only requirement for visual observers should be that they are capable of visually observing the small UAS and communicating with the remote pilot.

Other commenters suggested that airman certification should not be required for visual observers because the limited safety benefits of requiring certification would not justify the burden. Commenters including the University of Arkansas, Division of Agriculture and State Farm asserted that the costs of requiring visual observer airman certification would outweigh the benefits.

The Oklahoma Governor's Unmanned Aerial Systems Council said that imposing additional regulatory requirements on visual observers could increase safety risks since organizations would then be incentivized to minimize the number of visual observers due to cost and logistical issues. Similarly, NRECA suggested that the imposition of certification requirements could discourage the use of visual observers.

Multiple commenters expressed the opposite view and asserted that visual observers should be certificated by the FAA. NAAA stated that the visual observer should be certificated and should clearly understand his or her role. CAPA recommended that only UAS remote pilots, licensed as such, be able to participate as visual observers. CAPA also raised the question of who would be held responsible if an accident were to occur due to an uncertificated visual observer's negligence. Textron Systems suggested that visual observers with safety-of-flight responsibilities may be considered to be flight crewmembers and should be certificated as such.

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[80] 49 U.S.C. 44701(a)(5) gives FAA the power to prescribe regulations that it finds necessary for safety in air commerce and national security.

A few individuals generally argued that the same testing requirements should apply to all participants in small UAS operations, including the remote pilot and visual observer. One individual commented that a certificated visual observer could act as a safety redundancy backup for the operator. Another commenter suggested that UAS operator teams should follow a process similar to the traditional airman certification process. A third individual suggested that a visual observer should be required to hold a certificate similar to the ones held by air traffic controllers.

Under this rule, a visual observer will act only in a flight-support role to the remote pilot in command who will exercise operational control over the small UAS and will have final authority for the flight. Part 107 will not place any responsibility on the visual observer for the safety of the flight operation, as that responsibility falls on the remote pilot in command. Rather, the intended function of the visual observer under this rule will be to assist the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command) with situational awareness during the flight as needed by observing, among other things, the small unmanned aircraft's location, other air traffic, obstacle clearance, and people on the ground, and effectively communicating those observations to the remote pilot in command.

The FAA emphasizes that this rule will not give a visual observer the power to act on his or her observations because the visual observer will not share in the operational control of the aircraft. Rather, the visual observer's role will be simply to convey his or her observations to the person who has operational authority and/or control of the small UAS and can act on those observations. Because the visual observer's role is limited to simply conveying his or her observations to other people, the visual observer does not need special mandatory training, testing, or certification in order to safely carry out that role. The FAA also finds that, due to the very limited role that the visual observer has in the small UAS operation, the visual observer is not an airman, within the meaning of the FAA's statute, and is thus not statutorily required to obtain an airman certificate.[81]

In response to CAPA's comment concerning liability due to a visual observer's negligence, the person who violates the pertinent regulations would be the one held liable. The FAA also notes that, depending on the circumstances, the remote pilot in command may be held responsible as he or she has final authority over the small UAS operation.

Several commenters suggested that visual observers should be required to complete mandatory training. The University of North Georgia stated that visual observers must be trained on basic FAA rules and proximity awareness. Similarly, Federal Airways & Airspace remarked that visual observers should have a training course, such as a see-and-avoid course. The University of North Dakota's John D. Odegard School of Aerospace Sciences recommended that visual observers complete a training syllabus and be tested in the same areas of knowledge as the remote pilot. AIA commented that visual observer training should be required prior to assuming duty. Another commenter suggested that visual observers should be trained on the applicable sections of part 91.

ALPA recommended development of guidance material outlining appropriate background and training for the visual observer, defining appropriate subjects for the operator/pilot to discuss with the visual observer prior to flight, and clarifying what constitutes visual observation in the context of safe UAS operation. Similarly, TTD requested that the FAA issue guidance indicating the training that visual observers should complete, and asserted that, without any requirement to display skill proficiency or determine vision quality, neither the visual observer, pilot, nor FAA can be sure that the visual observer is reliable. NAAA stated that having a set of untrained eyes does little to enhance safety if the visual observer sees a safety threat that the remote pilot does not see.

As discussed previously, the role of a visual observer is limited to simply communicating what he or she is seeing to the person manipulating the flight controls (if that person is not the remote pilot in command) and the remote pilot in command. Special training and testing is not necessary for a person to be able to communicate what he or she is seeing to another person. Thus, this rule will not require visual observers to complete special training courses or pass a test prior to serving as a visual observer. While the FAA has not included provisions in the rule to require visual observer airman certification or training, the FAA may, in the future, issue guidance to assist remote pilots who choose to utilize the visual observer function.

The FAA also emphasizes that under the other requirements of this rule, the remote pilot in command must, prior to flight, provide important information to the visual observer. This information will include an understanding of the operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards. The remote pilot in command must also ensure that the visual observer understands and can properly utilize the method by which he or she will be maintaining effective communication with the remote pilot in command and the person manipulating the flight controls of the small UAS (if that person is not the remote pilot in command).

Many commenters generally emphasized the remote pilot's responsibility to ensure that the visual observer is competent and appropriately trained. SWAPA supported the use of visual observers but emphasized that under the FAA's proposal, the onus would be on the remote pilot to ensure any visual observers used in the operation were familiar with all aspects of the operation. Similarly, Aerius Flight encouraged the FAA to require the remote pilot to ensure that the visual observer has become familiar with the critical aspects of the operation prior to assuming duties. NBAA stated that the remote pilot should ensure that a visual observer, if used, understands the limits of small UAS operations.

Planehook stated that training and certification of visual observers should be an internal function unique to companies and organizations that regularly require the use of visual observers for their commercial operations. Another commenter emphasized that the UAS remote pilot is responsible for all aspects of each flight and must be in charge of selecting and training visual observers.

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[81] *See* 49 U.S.C. 40102(a)(8). This statute defines an airman as an individual: "(A) in command, or as pilot, mechanic, or member of the crew, who navigates aircraft when under way; (B) except to the extent the Administrator of the Federal Aviation Administration may provide otherwise for individuals employed outside the United States, who is directly in charge of inspecting, maintaining, overhauling, or repairing aircraft, aircraft engines, propellers, or appliances; or (C) who serves as an aircraft dispatcher or air traffic control-tower operator." The visual observer's limited role in the operation of a small UAS does not meet any of these criteria.

Additionally, several commenters, including Aviation Management and the Colorado Cattlemen's Association, mentioned that remote pilots should be responsible for briefing visual observers. Aviation Management emphasized the requirement for the remote pilot to ensure that all persons involved in the small UAS operation receive a briefing that includes operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards.

The FAA agrees that the remote pilot in command, in his or her role as the final authority over the small UAS operation, has ultimate responsibility for the safety of the operation and therefore should be responsible for selecting, training, and informing the visual observer (if one is used). The FAA also agrees with the commenters that a visual observer should be informed and understand all critical aspects of the small UAS operation prior to flight. That is why this rule will require the remote pilot in command to ensure that all persons directly participating in the small UAS operation, including the visual observer, are informed about the operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards.

A joint submission from the State of Nevada, the Nevada Institute for Autonomous Systems, and the Nevada FAA-designated UAS Test Site said that the visual observer should be required to self-certify that he or she has the aeronautical knowledge and visual acuity necessary to safely perform the small UAS operation. AUVSI, Prioria Robotics, the Professional Society of Drone Journalists, and several other commenters said that the visual observer should be required to hold a valid U.S.-issued driver's license or an FAA-issued medical certificate, which would ensure a visual test but not be overly burdensome. Planehook stated that the remote pilot should determine the medical suitability of any visual observer to perform pre-briefed duties.

The FAA disagrees that a driver's license should be a prerequisite to serving as a visual observer. As discussed in section III.F.2.a of this preamble, according to the DOT Office of Highway Policy Information, 13 percent of the population aged 16 or older does not hold a State-issued driver's license.[82] Thus, requiring a U.S. driver's license would create an undue burden for many visual observers without a significant increase in safety because the skills necessary to obtain a driver's license are not the same skills needed to serve as a visual observer in a small UAS operation.

The FAA also disagrees that self-certification concerning aeronautical knowledge and visual acuity by a person acting as a visual observer should be required by this rule because, as discussed elsewhere in this preamble, this rule does not impose any aeronautical knowledge or visual acuity requirements on visual observers. A visual observer cannot self-certify that he or she meets requirements that do not exist in this rule.

Finally, the FAA declines the suggestion to impose a specific duty on the remote pilot in command to determine the medical suitability of a visual observer. This rule does not require the remote pilot in command to be a doctor or have any medical training. As such, evaluating the potentially complex medical condition of another human being could be beyond the remote pilot in command's expertise. The FAA notes, however, that it expects the remote pilot in command to exercise his or her authority when a potential visual observer is clearly incapable of carrying out his or her assigned duties. For example, the remote pilot in command would not be ensuring a safe small UAS operation if he or she designates a visual observer who clearly is incapacitated or is under the influence of alcohol or drugs at the time of the operation.

c. Additional Visibility Requirements

To further ensure that the person maintaining visual line of sight in a small UAS operation can see and avoid other aircraft, this rule will: (1) Limit small UAS operations conducted outside of daylight hours; and (2) impose weather-minimum and visibility requirements.

i. Daytime Operations

Due to the reduced visibility associated with nighttime operations, the NPRM proposed to prohibit the operation of a small UAS outside the hours of official sunrise and sunset. For the reasons discussed below, this rule will maintain the prohibition on nighttime operations but will allow small UAS operations to be conducted during civil twilight if the small unmanned aircraft has lighted anti-collision lighting visible for at least 3 statute miles. The nighttime-operations prohibition in this rule will also be waivable.

Approximately 25 commenters generally supported the proposed prohibition on operations outside the hours of official sunrise and sunset. ALPA noted that the prohibition is consistent with the ARC recommendations. The Minneapolis-Saint Paul Metropolitan Airports Commission (Metropolitan Airports Commission) asserted that nighttime operations introduce a number of visual illusions, and unlike manned-aircraft pilots, small UAS operators will not be required to complete comprehensive training programs that teach pilots how to deal with these illusions. The City and County of Denver, Colorado noted that allowing operations only in the lightest of conditions will increase the probability of avoidance in the event of a conflict.

Federal Airways provided some conditions and limitations under which they would support nighttime operations of UAS, but ultimately noted that if the goal is to be as least burdensome as possible, limiting operating hours to daylight hours only would eliminate the need for further specification in lighting requirements. The American Association of Airport Executives and Barrick Gold of North America, Inc. concurred with the nighttime operation prohibition, but added that in the future, technological advances may provide the opportunity to allow nighttime operations.

Other commenters objected to the proposed prohibition on nighttime operations. Skycatch, Clayco, AECOM and DPR Construction, commenting jointly, and several individuals, suggested that the proposed prohibition on nighttime operations be entirely eliminated from the final rule. Cherokee Nation Technologies and The Information Technology and Innovation Foundation asserted that nighttime operations can be safer than daytime operations because there is less air traffic and there are fewer people on the ground. EEI and AUVSI suggested that nighttime UAS operations are safer and less disruptive than nighttime manned-aircraft operations such as helicopters circling overhead. Virginia Commonwealth University Honors Students said the proposed ban on nighttime operations ignores the use of other senses, particularly sound, to detect and avoid other aircraft. DJI stated that because manned aircraft operating at night are required to be equipped with lighting, UAS operators would be able to satisfy their see-and-avoid requirements, even when operating at night.

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[82] *See https://www.fhwa.dot.gov/policyinformation/pubs/hf/pl11028/chapter4.cfm* (stating that 87% of the population aged 16 or older holds a driver's license).

A large number of commenters who opposed the daytime-only restriction of small UAS operations proposed several methods of mitigating hazards. The mitigation strategies were generally related to improving visibility to support see-and-avoid, augmenting see-and-avoid with technology, implementing additional restrictions for operations at night, and requiring additional certification or training. For example, the Airborne Law Enforcement Association, NBAA, and the National Ski Areas Association said nighttime operations of small UAS could be conducted safely if the aircraft is equipped with proper lighting. The National Association of Broadcasters, National Cable & Telecommunications Association and Radio Television Digital News Corporation, commenting jointly, and the Associated General Contractors of America supported nighttime operations in well-lit areas, such as closed sets or sites of sporting events. The Kansas State University UAS Program cited preliminary research that, it argued, indicates that UAS equipped with navigation lights are often easier to see at night than during the day.[83]

Nighttime operations pose a higher safety risk because the reduced visibility makes it more difficult for the person maintaining visual line of sight to see the location of other aircraft. While the existence of other lighted manned aircraft may be apparent due to their lighting, the distance and movement of small unmanned aircraft relative to the distance and movement of those aircraft is often difficult to judge due to the relative size of the aircraft. In addition, visual autokinesis (the apparent movement of a lighted object) may occur when the person maintaining visual line of sight stares at a single light source for several seconds on a dark night. For this reason, darkness makes it more difficult for that person to perceive reference points that could be used to help understand the position and movement of the lighted manned aircraft, the small unmanned aircraft, or other lighted object.

The lack of reference points at night is problematic for small UAS subject to part 107 because they are not required to have any equipage that would help identify the precise location of the small unmanned aircraft. As such, a remote pilot in command operating under this rule will generally rely on unaided human vision to learn details about the position, attitude, airspeed, and heading of the unmanned aircraft. This ability may become impaired at night due to a lack of reference points because all a remote pilot may see of his or her aircraft (if it is lighted) is a point of light moving somewhere in the air. For example, a lighted small unmanned aircraft flying at night may appear to be close by, but due to a lack of reference points, that aircraft may actually be significantly farther away than the remote pilot perceives. An impairment to the remote pilot's ability to know the precise position, attitude, and altitude of the small unmanned aircraft would significantly increase the risk that the small unmanned aircraft will collide with another aircraft.

In addition to avoiding collision with other aircraft, remote pilots in command must also avoid collision with people on the ground, as well as collision with ground-based structures and obstacles. This is a particular concern for small UAS because they operate at low altitudes. When operating at night, a remote pilot may have difficulty avoiding collision with people or obstacles on the ground which may not be lighted and as a result, may not be visible to the pilot or the visual observer. As such, this rule will not allow small UAS subject to part 107 to operate at night (outside of civil twilight) without a waiver.

The Motion Picture Association of America (MPAA) and several individuals recommended that small UAS operations be permitted between civil dawn and civil dusk. The commenters stated that there is sufficient light during civil twilight to see and avoid ground-based obstacles. One commenter compared UAS to ultralight vehicles, citing precedent in § 103.11(b), which allows ultralight vehicles to be operated during civil twilight, provided the vehicle is equipped with an operating anti-collision light visible for at least 3 statute miles. The Drone User Group Network suggested that with appropriate lighting, a small UAS would in fact be more visible in low light than during the day, thus enabling the remote pilot to exercise his or her visual-line-of-sight responsibility. Many of the comments cited photography as a type of operation that could be conducted during twilight hours.

Civil twilight is a period of time that, with the exception of Alaska,[84] generally takes place 30 minutes before official sunrise and 30 minutes after official sunset. The FAA agrees with commenters that operations during civil twilight could be conducted safely under part 107 with additional risk mitigation because the illumination provided during civil twilight is sufficient for terrestrial objects to be clearly distinguished during clear weather conditions. As a result, many of the safety concerns associated with nighttime operations are mitigated by the lighting that is present during civil twilight. That is why current section 333 exemptions permit twilight UAS operations. Accordingly, this rule will allow a small UAS to be operated during civil twilight.

However, while civil twilight provides more illumination than nighttime, the level of illumination that is provided during civil twilight is less than the illumination provided between sunrise and sunset. To minimize the increased risk of collision associated with reduced lighting and visibility during twilight operations, this rule will require small unmanned aircraft operated during civil twilight to be equipped with anti-collision lights that are visible for at least 3 statute miles.

A remote pilot in command may reduce the intensity of the anti-collision lights if, because of operating conditions, it would be in the interest of safety to do so. For example, the remote pilot in command may reduce the intensity of anti-collision lights to minimize the effects of loss of night vision adaptation. The FAA emphasizes that anti-collision lighting will be required under this rule only for civil twilight operations; a small unmanned aircraft that is flown between sunrise and sunset need not be equipped with anti-collision lights.

The FAA acknowledges that current exemptions issued under Public Law 112–95, section 333 allow civil twilight operations without a requirement for anti-collision lighting. However, the section 333 exemptions do not exempt small UAS operations from complying with § 91.209(a), which requires lighted position lights when an aircraft is operated during a period from sunset to sunrise (or, in Alaska, during the period a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon). As such, UAS currently operating under a section 333 exemption have lighting requirements when operating during civil twilight.

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[83] The comment provided a link to a news article containing a short summary of the Kansas State University UAS Program's preliminary analysis of its research but did not provide the actual research. The linked article also did not include all of the assumptions and methodology used in the research or the data collected during testing. Finally, the article concluded by noting that "more analysis is needed." As a result, the FAA does not currently have sufficient information to evaluate the research cited in the comment.

[84] Civil twilight in Alaska is discussed later in this section of the preamble.

However, while current section 333 exemptions rely on position lighting, it would be impractical for this rule to prescribe specifications for position lighting for civil twilight operations because a wider range of small unmanned aircraft will likely operate under part 107. Position lighting may not be appropriate for some of these aircraft. Thus, instead of position lighting, small unmanned aircraft operating under part 107 will be required to have anti-collision lights when operating during civil twilight.

The FAA also notes that meteorological conditions, such as haze, may sometimes reduce visibility during civil twilight operations. Accordingly, the FAA emphasizes that, as discussed in the following section of this preamble, this rule also requires that the minimum flight visibility, as observed from the location of the ground control station, must be no less than 3 statute miles.

Several commenters, including the Nature Conservancy, MPAA, Commonwealth Edison Company, the American Fuel & Petrochemical Manufacturers, and the Newspaper Association of America, suggested that certain types of operations should be exempt from the proposed nighttime prohibition. These operations include: Emergency operations, public service operations, hazardous material response, railroad incident management, public utility inspection and repair, pipeline monitoring, thermal roof inspections using infrared technology, conservation-related operations in sparsely populated areas, ski area operations where people and property can be easily avoided, news-reporting, and filming in controlled, well-lit areas. The American Farm Bureau and several other commenters claimed that certain UAS operations are best conducted at night. These operations include research and humanitarian operations, crop treatments, wildfire fighting, nocturnal wildlife monitoring, infrastructure monitoring, and operations using infrared and thermal imaging cameras. The Property Drone Consortium stated that a daylight-only requirement would restrict the ability of its members to conduct thermal imaging using small UAS.

Commonwealth Edison stated that the proposed restriction to daylight-only operations would constrain the ability to use small UAS to respond to emergencies that occur outside of daylight hours. Similarly, NRECA stated that the restriction to daylight operations would severely impede its members' ability to respond to electrical grid emergencies caused by weather. Both Commonwealth Edison and NRECA suggested that the final rule include deviation authority to allow nighttime operations if it can be shown that such operations can be conducted safely. Similarly, Boeing, the University of North Dakota's John D. Odegard School of Aerospace Sciences, and DJI recommended that the proposed nighttime-operation prohibition be amended to allow waivers to be authorized by the Administrator to accommodate time-critical and emergency operations that may need to be conducted at night if those operations can be conducted safely.

The FAA agrees with commenters that there could be benefits to allowing certain small UAS operations at night, such as search and rescue or firefighting operations when those operations are conducted as civil operations. As such, the nighttime-operation prohibition in this rule will be waivable. The FAA will consider granting a certificate of waiver allowing a nighttime small UAS operation if an applicant can demonstrate sufficient mitigation such that operating at night would not reduce the level of safety of the operation.

The American Petroleum Institute recommended an exception for Alaska's North Slope, an area of significant operations for the oil and gas industry. The commenter noted that there are no daylight hours for approximately 3 months of the year in that area.

The same safety concerns exist in northern Alaska as they do anywhere in the United States during periods of darkness. However, as discussed previously, this rule will allow small UAS operations to be conducted during civil twilight. This will add significantly greater flexibility to Alaska operations because for the northernmost portions of Alaska, the sun never rises for as many as 64 days a year. By allowing operations to take place during civil twilight, this rule will allow small UAS operations year round, even in Alaska's North Slope. In addition, as discussed previously, the FAA will consider granting a certificate of waiver for specific nighttime operations if the applicant can demonstrate that operating at night will not reduce the safety of the operation.

Qualcomm, FLIR Systems, the Drone User Group Network, and several individuals supported operations at night utilizing technology such as night-vision cameras to allow the aircraft to be safety piloted. The Association of American Railroads contended that risks associated with nighttime operations could be mitigated by requiring small unmanned aircraft to be equipped with sense-and-avoid technology approved by the FAA. Kapture Digital Media and another commenter asserted that night-vision-enabled FPV cameras are available that would aid in seeing-and-avoiding other aircraft and hazards at night. The South Dakota Department of Agriculture suggested that the FAA prescribe a performance-based standard in lieu of daylight-only restrictions, thus allowing for the integration of new risk-mitigating technologies as they are developed and refined. The Colorado Cattlemen's Association suggested that risks related to low-light and nighttime operations could be mitigated through technological equipage.

For the reasons discussed earlier in this preamble, existing vision-enhancing devices, such as FPV, do not currently provide a field of vision sufficient for the user to safely see and avoid other aircraft. Current sense-and-avoid technology would also insufficiently mitigate the risk associated with flying at night because this technology is still in its early stages of development. As of this writing, there is no sense-and-avoid technology that has been issued an airworthiness certificate. The FAA will keep monitoring this technology as it develops and may incorporate it, as appropriate, into certificates of waiver, future UAS rules, or possible future revisions to part 107.

Several commenters suggested permitting nighttime operations by further segmenting the small UAS category of aircraft by lesser weights or lower operational altitudes. However, even a relatively light small unmanned aircraft could cause a hazard by colliding with another aircraft in the NAS or an object on the ground. As discussed previously, these safety risks are more prevalent at night due to reduced visibility. While low weight could be one mitigation measure that a person could use to support a waiver application, this factor, by itself, would be unlikely to mitigate the additional risk associated with a nighttime small UAS operation.

Embry-Riddle and the Florida Department of Agriculture, Consumer Services' UAS Working Group (Florida Department of Agriculture) proposed allowing operators possessing additional certification to fly at night. Textron Systems and several individuals recommended additional training for night operations.

As discussed previously, this initial small UAS rulemaking effort is intended to immediately integrate the lowest risk small UAS operations into the NAS. The

FAA plans to address higher risk operations and the mitigations necessary to safely conduct those operations, such as the mitigations suggested by the commenters, in future agency actions. The FAA will consider the commenters' recommendations as part of future rulemaking efforts to integrate higher-risk UAS operations, such as nighttime operations, into the NAS.

AUVSI, Prioria Robotics, and a joint submission from Skycatch, Clayco, AECOM, and DPR Construction pointed to Australia and New Zealand as examples of countries where nighttime operations have been safely conducted in areas with established UAS regulations. In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO SARPs to the maximum extent practicable. However, there are currently no ICAO SARPs that correspond to the nighttime-operation provisions of these regulations. Because the integration of UAS into the NAS is an incremental process, the FAA will continue expanding UAS operations to include those that pose greater amounts of risk, utilizing data gleaned from industry research, the UAS test sites, and international UAS operations.

Matternet and the Mercatus Center at George Mason University cited § 101.17, stating that kites and moored balloons operate safely at night, with specific lighting requirements, even though they are not equipped with the kinds of sense-and-avoid technologies likely included in small UAS systems.

As discussed previously, sense-and-avoid technology does not currently provide sufficient mitigation to enable nighttime operations. In addition, while kites and moored balloons operated under part 101 are permitted to operate at night, § 101.15 requires the kite or moored balloon operator to notify the nearest ATC facility of the details of the operation at least 24 hours prior to each operation. Because kites and moored balloons governed by part 101 operate in a fixed location, this ATC notification allows ATC to disseminate details of the operation to other aircraft in the area. Conversely, with some exceptions, small UAS operating under part 107 in Class G airspace will not be required to communicate with ATC prior to or during the operation.

One commenter suggested that small UAS operations be limited to the period between one half hour after official sunrise and one half hour before official sunset, arguing that it is not uncommon for small unmanned aircraft to have low-visibility color schemes. However, it is not necessary to further reduce operations conducted near sunset or sunrise to mitigate the risk of small UAS operations in low light conditions. As discussed previously, low-light conditions provide sufficient lighting to mitigate many of the safety concerns underlying the prohibition on nighttime operations.

ii. Weather/Visibility Minimums

The NPRM also proposed additional visibility and cloud-clearance requirements to ensure that the person maintaining visual line of sight has sufficient visibility to see and avoid other aircraft. Specifically, the NPRM proposed a minimum flight visibility of at least 3 statute miles from the location of the ground control station. The NPRM also proposed that the small unmanned aircraft must maintain a minimum distance from clouds of no less than: (1) 500 feet below the cloud; and (2) 2,000 feet horizontally away from the cloud. This rule will finalize these minimum-flight-visibility and cloud-clearance requirements as proposed in the NPRM but will make those requirements waivable.

Commenters including NAAA, ALPA, and Commonwealth Edison Company supported the proposed minimum flight visibility and distance-from-clouds requirements. Commonwealth Edison asserted that the proposed visibility requirements, in combination with the other proposed operational requirements, would "safeguard safety while recognizing reasonable commercial interests in such a rapidly evolving technological environment." NAAA stated that the proposed requirements are consistent with the VFR visibility requirements under 14 CFR 91.155 and 91.115. The Professional Helicopter Pilots Association strongly agreed that "weather minimums be at least basic VFR." ALPA also agreed that all operations must take place in visual meteorological conditions (VMC) with the identified cloud clearances. ALPA further recommended that it be made clear that the 3-mile visibility requirement for VMC does not mean that the visual-line-of-sight required elsewhere in the proposed regulation can necessarily be maintained at 3 miles.

Modovolate Aviation, NAMIC, the Property Drone Consortium, and a few individuals generally opposed the imposition of minimum flight visibility and distance-from-cloud requirements. The commenters asserted that such requirements are unnecessary, given the visual-line-of sight requirement of § 107.31. Modovolate stated that it is unlikely that an operator can keep a small UAS in sight at a distance of 3 miles, so a separate weather-visibility requirement is redundant. Modovolate also stated that a small UAS operator cannot maintain visual contact with his small UAS if it is flown in a cloud, but he would be able to fly his small UAS closer than 500 or 1,000 feet to a well-defined cloud without risk.

The Professional Society of Drone Journalists (PSDJ), and Edison Electric Institute, individually and jointly with NRECA and APPA, recommended the removal of the cloud distance requirements altogether. PSDJ asserted that the proposed cloud distance requirements would render many types of weather coverage and research projects impossible and would also make it impossible for small UAS to replace high-risk manned flights, "such as inspecting tower, bridges, or other structures," as contemplated by the NPRM. The Travelers Companies, Inc. recommended the removal of the requirement that small UAS maintain a distance of no less than 2,000 feet horizontally from a cloud, claiming it is not relevant or workable for pilots flying small UAS from the ground. Aerial Services added that the safety concerns associated with cloud clearance will be alleviated with automation, the maximum altitude restriction, and the restriction on the use of small UAS in the vicinity of airports.

Several other commenters generally supported the imposition of minimum flight visibility and cloud clearance requirements, but said the proposed minimum requirements should be reduced. Commenters including State Farm, AUVSI, the Unmanned Safety Institute, and DJI, argued that the minimum flight visibility and cloud distance should be reduced to 1 statute mile and changed to "remain clear of clouds." AUVSI asserted that this reduced requirement will reflect the small size, low speeds, and additional operating limitations of small UAS.

EEI said the proposed regulation is too restrictive, especially in areas prone to low cloud cover. The commenter argued that, as long as the operator maintains visual line of sight with the small UAS, the aircraft should be permitted to navigate up to 500 feet, regardless of the elevation of the clouds above 500 feet. In a joint comment, EEI, NRECA, and APPA noted that under the proposed visibility rules, for every foot cloud cover dips below 1,000 feet, the small UAS dips a foot below 500 feet, so that cloud cover at 500 feet would ground all small UAS operations. The commenters suggested that operations in Class G airspace should be allowed up to 500 feet AGL, or the height of cloud cover, whichever is lower. Exelon Corporation further suggested the rule include permission to operate on the transmission and distribution rights-of-way at altitudes not to exceed the tops of the structures plus 50 feet without weather visibility restrictions. The News Media Coalition suggested eliminating the flight-visibility and cloud-clearance requirements for UAS operated within the parameters in the blanket COA for section 333 exemptions.[85]

As discussed earlier, under this rule, the remote pilot in command will be responsible for observing the operating environment for other aircraft and, if necessary, maneuvering the small unmanned aircraft to avoid a collision with other aircraft. However, there is a significant speed difference between a manned aircraft and a small unmanned aircraft. Under part 91, a manned aircraft flying at low altitude could travel at speeds up to 230 to 288 miles per hour (mph).[86] On the other hand, a small unmanned aircraft operating under this rule will have a maximum speed of 100 mph and many small unmanned aircraft will likely have a far lower maximum speed.

Because of this difference in maximum speed, the remote pilot in command will need time to respond to an approaching manned aircraft. A minimum flight visibility requirement of 3 statute miles is necessary to ensure that the remote pilot in command can see far enough away to detect a manned aircraft near the area of operation in time to avoid a collision with that aircraft. Additionally, cloud clearance provisions that require the small unmanned aircraft to maintain a distance of at least 500 feet below the cloud and 2,000 feet horizontally away from cloud are necessary to reduce the possibility of having a manned aircraft exit the clouds on an unalterable collision course with the significantly slower small unmanned aircraft. Accordingly, this rule will retain the proposed minimum-flight-visibility requirement of 3 statute miles and minimum cloud-distance requirements of 500 feet below the cloud and 2,000 feet horizontally away from the cloud.

In response to ALPA's concern, the FAA clarifies that the minimum-flight-visibility and visual-line-of-sight requirements of this rule are separate requirements that must both be satisfied. The visual-line-of-sight requirement of § 107.31 is intended to ensure that the person maintaining visual line of sight can see the small unmanned aircraft and the immediately surrounding airspace. It is unlikely that a person will be able to maintain visual line of sight of a small unmanned aircraft in compliance with § 107.31 if that aircraft is 3 miles away from him or her. Conversely, the 3-mile visibility requirement of § 107.51 is intended simply to ensure that the person at the control station is able to see relatively larger manned aircraft that may rapidly be approaching the area of operation.

Southern Company suggested that small UAS operations should mirror the VFR weather minimums for manned-helicopter flight and that the Special VFR minimums under 14 CFR 91.157 should also apply to small UAS operations to the extent available for helicopters. The commenter suggested that small UAS operations would satisfy the requirements for Special VFR flight, because only ATC authorization is necessary before Special VFR flight and all small UAS must receive an ATC clearance when operating in controlled airspace. The commenter also asserted that the use of helicopter minimums is appropriate in this rule because, like helicopters, a small UAS is highly maneuverable and easier to land than fixed-wing aircraft. The Small UAV Coalition similarly suggested that the FAA adopt the helicopter cloud-clearance test for small UAS.

The FAA acknowledges that the part 107 visibility requirements for small UAS operations in Class G airspace will be more stringent than the requirements of part 91. Part 91 allows aircraft operating in Class G airspace to operate with 1 statute mile visibility and simply requires the aircraft to keep clear of clouds. However, as numerous commenters pointed out, small UAS operating under this rule may, as a result of their size, be difficult to see for manned-aircraft pilots. Additionally, unlike manned aircraft, small unmanned aircraft will not be required to carry equipage, such as TCAS and ADS–B, that aids in collision avoidance. Because of the additional challenges with collision avoidance raised by small UAS operating under part 107, a more stringent visibility requirement is necessary than the one imposed by part 91 on manned-aircraft operations in Class G airspace.

Vail Resorts asked the FAA to reduce or eliminate cloud clearance requirements in certain terrain, or with certain mitigation in place (*e.g.*, a lighting system on the small UAS). The commenter stated that the minimum-flight-visibility and distance-from-cloud requirements are unnecessarily restrictive in a high alpine environment where the potential for interaction with manned aircraft is incredibly remote, and can be mitigated by other limitations. Venture Partners asserted that its products will contain onboard technology and capabilities that will allow UAS to operate in adverse weather conditions.

The FAA agrees that there could be operations in areas where the likelihood of interaction with manned aircraft is reduced or in which the risk of collision with a manned aircraft is mitigated by other means (such as technological equipage). Accordingly, the FAA has made the visibility and cloud-clearance requirements of part 107 waivable and will consider individual operating environments and other mitigations as part of its review of a waiver request. The FAA plans to use data acquired as part of the waiver process to inform future agency actions that will further integrate UAS into the NAS.

The Airborne Law Enforcement Association requested an exception from the 3-mile minimum flight visibility requirement for public safety operations, saying that, with the visual-line-of-sight restriction, "there are many opportunities to safely utilize UAS technology to the benefit of public safety operations." The Organization of Fish and Wildlife Information Managers recommended a disaster-response exemption from the 3-mile flight visibility requirement, asserting that UAS flights in conditions with less than 3 miles of visibility could be integral in protecting human life and natural research welfare in the event of a man-made or natural disaster.

As discussed earlier, this rule will not apply to public aircraft operations unless the operator chooses to conduct the operation as a civil aircraft. Thus, public aircraft operations, such as public safety operations conducted by law enforcement agencies, will not be subject to part 107. With regard to the other specific types of operations mentioned in the comments, as discussed previously, the minimum-flight-visibility and cloud-clearance requirements of this rule will be waivable. Thus, operations conducted for salutary purposes, such as the ones mentioned by the commenters, could be authorized through the waiver process if the remote pilot establishes that the operation can safely be conducted under the terms of a certificate of waiver.

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[85] The specific parameters suggested by the commenter consisted of flight at or below 200 feet AGL and at least (a) 5 nautical miles from an airport having an operational control tower; (b) 3 nautical miles from an airport with a published instrument flight procedure, but not an operational tower; (c) 2 nautical miles from an airport without a published instrument flight procedure or an operational tower; or (d) 2 nautical miles from a heliport with a published instrument flight procedure.

[86] 14 CFR 91.117.

The Metropolitan Airports Commission, Airports Council International-North America, the American Association of Airport Executives, and Exelon Corporation recommended that the requirement for 3 miles of visibility be from the location of the small unmanned aircraft and not from the location of the ground control station. The Metropolitan Airports Commission stated that the 3-mile visibility requirement is based on a manned aircraft pilot's vantage point positioned inside the aircraft, which provides a 3-mile observation radius around the aircraft to see and avoid potential hazards. Airports Council International-North America claimed that a 3-mile visibility requirement from the unmanned aircraft instead of the ground control station will prevent cases where the UAS operator operates an aircraft at the limit of the operator's line of sight. Lloyd's Market Association and the International Underwriting Association said the 3-mile minimum flight visibility requirement may be difficult to administer and police, and wondered if maximum wind speeds have been taken into account.

This rule will retain the requirement that the minimum visibility must be measured from the control station. The reason for this requirement is to allow the person manipulating the flight controls of the small UAS to see other aircraft that could be entering the area of operation. The person manipulating the small UAS flight controls will be located at the control station (since the control station is the interface used to control the flight), and thus the minimum-visibility requirement must be measured from the control station. With regard to the comment arguing that the 3-mile minimum flight visibility requirement may be difficult to administer and police, the remote pilot in command must, among other things, ensure that the small UAS operation complies with part 107.

This rule will not impose prescriptive requirements on maximum permissible wind speed because there is a wide range of small UAS that could be operated under part 107. These UAS will have varying ability to respond to wind and a prescriptive regulatory requirement would be more stringent than necessary on certain small UAS while being less stringent than necessary on other UAS. Instead, § 107.49(a)(1) will require the remote pilot in command to assess local weather conditions as part of the preflight assessment required by § 107.49. If the remote pilot in command determines that the wind speed is too high to safely conduct the small UAS operation, then he or she will have to either reschedule the operation or implement mitigations to ensure the safety of the operation.

One commenter asked the FAA to clarify whether the 3-mile flight visibility requirement is horizontal visibility or slant angle visibility. The commenter asserted that there are many situations where radiation or advection fog might obscure horizontal visibility yet bright blue sky is visible above the fog.

The 3-mile flight visibility requirement is based on a slant angle from the control station. In other words, a person standing at the control station of the small UAS must be able to see at a diagonal distance of 3 miles into the sky in order to detect other aircraft that may be approaching the area of operation. This requirement ensures that the remote pilot in command can effectively observe the airspace for presence of other aircraft, and reduces the possibility of the remote pilot or visual observer losing sight of the unmanned aircraft. To further clarify this concept, the FAA has amended § 107.51(c) to explain that flight visibility refers to the average slant distance from the control station at which prominent unlighted objects may be seen and identified by day and prominent lighted objects may be seen and identified by night.

The University of North Dakota's John D. Odegard School of Aerospace Sciences suggested that the rule prohibit small UAS operations above clouds because those operations could endanger manned aircraft flying under instrument flight rules (IFR). In response, the FAA notes that a person is unlikely to be able to maintain visual line of sight of a small unmanned aircraft that is flying above the clouds.

Schertz Aerial Services, the Permanent Editorial Board of the Aviators Model Code of Conduct Initiative, and the City and County of Denver, Colorado suggested that the proposed flight-visibility and minimum-cloud-distance requirements be increased. Schertz Aerial Services said that because UAS are so much smaller than manned aircraft, the proposed 3-mile flight visibility requirement, which was developed for manned aircraft, is not adequate for UAS and should be increased to 5 statute miles. Denver also recommended increasing the minimum flight visibility requirement to 5 statute miles, but only in controlled airspace. The commenter additionally recommended the imposition of a 2,000-foot ceiling for operations in controlled airspace. "Those visibility enhancements," Denver continued, "will maximize opportunities for both the operator and other aircraft pilots to successfully employ the see-and-avoid technique."

One commenter said the minimum flight visibility requirement should be increased to 10 to 12 miles and the distance-from-cloud requirements should both be increased by 1,000 feet. Another commenter said the FAA should set a specific percentage or range for cloud coverage to be allowed during flight, in addition to the distance-from-cloud requirements.

The FAA recognizes the fact that increased flight visibility would provide more time for the remote pilot in command to maneuver away from other aircraft. However, the likelihood of the remote pilot seeing other small UAS, other smaller aircraft, or other hazards such as power lines or antennas from a distance of five or more miles is not probable, so such a requirement would not create an additional safety buffer. A 5-mile visibility requirement above 10,000 feet mean sea level (not including the surface to 2,500 feet above ground level) is imposed by part 91 because manned-aircraft pilots have a need for increased visibility at that higher altitude due to permitted airspeeds above 288 mph. A remote pilot in command, on the other hand, will remain on the ground and will have to deal with ground obstacles that impede vision. The remote pilot in command will also be looking into the sky at a slant angle from the ground rather than horizontally in the manner of a manned-aircraft pilot. This means that a remote pilot will generally be challenged to perceive useful information from his or her vision beyond three miles. An increase in the cloud distance requirements poses the same dilemma, unless the object is large enough or distinct enough it will not likely be visible early enough to provide the opportunity to avoid or change course sooner.

PlaneSense and Cobalt Air, commenting jointly, recommended prohibiting a remote pilot from operating a small UAS if the ceiling is lower than 1000 feet MSL. The commenters contended that for manned aircraft, the pilot is in the aircraft and is therefore better able to make a determination about the distance to a cloud from the aircraft than an operator on the ground positioned 1/4 mile away from the unmanned aircraft.

The FAA declines to prohibit small UAS operations when cloud ceilings are lower than 1,000 feet AGL.[87] Specifically, the FAA disagrees that the remote pilot in command will not be in a position to determine whether the unmanned aircraft is positioned sufficiently far enough from a cloud to meet the requirements of § 107.51(d). While this rule does not require specific technological equipage to determine altitude of the unmanned aircraft, nothing in this rule precludes the remote pilot in command from doing so as a means to mitigate the risk of cloud clearance requirements. A remote pilot in command may also opt to operate the unmanned aircraft at a sufficiently low altitude that he or she can easily determine the aircraft's altitude. Further, cloud ceilings can be determined through nearby AWOS/ASOS/ATIS reports, visual cloud observations, or observation of obscuration of nearby prominent landmarks of a known elevation. If a remote pilot in command cannot ensure that the unmanned aircraft will maintain sufficient cloud clearance in accordance with § 107.51(d), that person may not conduct operations until weather conditions improve. As such, no minimum ceiling requirement is necessary in this rule.

Noting that the NPRM would not require a qualified weather observer, one commenter questioned who is responsible for determining visibility at the time of the operation. The commenter further questioned if the regulation has a requirement for the airman trained and certificated for small UAS to receive training and demonstrate competence in making accurate visibility determinations. Another commenter also questioned who determines visibility, and recommended that FAA require as a minimum that VMC exist and that the closest Official Weather Reporting Station be used.

Under this rule, the remote pilot in command is ultimately responsible for determining whether a flight can be conducted safely. As part of the preflight assessment required by § 107.49, the remote pilot in command must evaluate local weather conditions, which includes an evaluation of whether those conditions are sufficient to meet the requirements of § 107.51(c) and (d). With regard to competence, as discussed in section III.F.2.j of this preamble, knowledge of aviation weather sources that can be used to inform the small UAS operation will be tested on both the initial and recurrent aeronautical knowledge test. The initial aeronautical knowledge test will also test the airman certificate applicant's knowledge of effects of weather on small unmanned aircraft performance. For the reasons discussed in section III.F.2.e of this preamble, formal training and practical testing requirements are not a necessary component of this rule.

iii. Yielding Right of Way

For the reasons discussed below, this rule will finalize the NPRM-proposed requirement that small unmanned aircraft must yield the right of way to all other users of the NAS but will make that requirement waivable. As discussed in the NPRM, the smaller visual profile of the small unmanned aircraft, the lack of collision-avoidance technology on the aircraft, and the difference in speed between the unmanned and manned aircraft increases the difficulty for manned-aircraft pilots to see and avoid the small unmanned aircraft. As such, this rule will require that the small unmanned aircraft always be the one to initiate an avoidance maneuver to avoid collision with any other user of the NAS. This rule will also include the NPRM-proposed requirement prohibiting the operation of a small unmanned aircraft so close to another aircraft as to create a collision hazard.

Approximately 20 commenters agreed with the proposal that small unmanned aircraft must always yield the right of way to all other users of the NAS. Several commenters stated that the requirement is sensible because small unmanned aircraft are more difficult to see than manned aircraft. Numerous other commenters, including NAAA, stated that small unmanned aircraft are more maneuverable than manned aircraft and therefore would have less difficulty taking evasive action to avoid a collision with a manned aircraft.

On the other hand, the Small UAV Coalition suggested that in certain circumstances it may be preferable to have a manned-helicopter yield to a small unmanned aircraft. The Small UAV Coalition presented a scenario where a small UAS is being operated to film a newsworthy event. If a manned helicopter were to arrive later to also film the event, under the proposed rule, the small UAS would be required to yield right of way to the helicopter. The commenter suggested that safety would be better served if both the manned and unmanned aircraft maintained awareness so as to see and avoid each other and proposed that part 107 adopt the right-of-way rules currently used in part 91. Another commenter suggested that the FAA should consider creating different right-of-way rules for different classes of NAS users.

Requiring small unmanned aircraft to always yield the right of way to all other users of the NAS is a critical component of the see-and-avoid framework of part 107. As discussed in the NPRM, the small size associated with small unmanned aircraft will make those aircraft more difficult to detect for manned-aircraft pilots. Additionally, small UAS operating under this rule will not be required to be equipped with collision avoidance technology, such as transponders or TCAS, that would make it easier for manned-aircraft pilots to detect a small unmanned aircraft operating in their vicinity. Conversely, because of the far larger size and higher noise profile of manned aircraft, the person maintaining visual line of sight as part of a small UAS operation will be in a far better position to detect other users of the NAS and initiate maneuvers to avoid a collision.

As such, this rule will retain the proposed requirement that the small unmanned aircraft must always be the one to initiate an avoidance maneuver to avoid collision with any other user of the NAS. This rule will make this requirement waivable for individual small UAS operations (if the proposed operation can safely be conducted under the terms of a certificate of waiver), but will otherwise retain the right-of-way requirement as proposed in the NPRM.

When yielding the right of way, the small unmanned aircraft should optimally yield to manned aircraft in such a manner that the manned aircraft is never presented with a see-and-avoid decision or the impression that it must maneuver to avoid the small unmanned aircraft. The FAA also emphasizes that in extreme situations where collision is imminent, the remote pilot in command must always consider the safety of people first and foremost over the value of any equipment, even if it means the loss of the small unmanned aircraft.

An individual suggested that the FAA clarify that it is the remote pilot's responsibility, more so than that of a manned aircraft pilot, to exercise due diligence to prevent other aircraft from having to take evasive action to avoid the small unmanned aircraft.

The FAA emphasizes that it is the responsibility of all users of the NAS to avoid a collision. However, this rule places a duty on the small unmanned aircraft to always yield the right of way to other users of the NAS because the remote pilot in command will have a better ability to detect those users. Specifically, due to size, noise, and equipage considerations that apply to manned aircraft, it will be easier for a remote pilot to detect a manned aircraft operating in his or her vicinity than for a manned aircraft pilot to detect a small unmanned aircraft.

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[87] The commenters referred to 1,000 feet MSL, but the FAA assumes the commenter intended to recommend a prohibition of operations with a ceiling less than 1,000 feet AGL.

The Small UAV Coalition sought clarification on what it means to "give way to the other aircraft or vehicle and may not pass over, under, or ahead of it unless well clear." The Air Medical Operators Association, HAI, and an individual noted that the NPRM does not define the term "well clear." The Small UAV Coalition asserted that "this explanation would permit a sUAS operator to take precedence over a manned helicopter provided the UAV remain 'well clear' of the manned helicopter."

Under this rule, yielding the right of way means that the small unmanned aircraft must give way to the other aircraft or vehicle and may not pass over, under, or ahead of the other aircraft/vehicle unless well clear. The term "well clear" means that the small unmanned aircraft is far enough away from the other aircraft or vehicle that it no longer presents a hazard to that aircraft or vehicle. Thus, if a manned aircraft enters the area of operation, the small unmanned aircraft must initiate maneuvers to ensure that it maintains a distance from the manned aircraft such that there is no risk of collision with that aircraft. In response to the Small UAV Coalition, the FAA notes that there is no right-of-way issue if two aircraft are far enough apart that they do not present a hazard to each other.

One commenter suggested that this rule allow the remote pilot in command to determine the specifics of how to yield the right of way to another aircraft.

The FAA declines to allow a remote pilot in command to pass over, under, or ahead of a manned aircraft if the small unmanned aircraft is not well clear of the manned aircraft. Compared to a pilot onboard a manned aircraft, it may be more difficult for a remote pilot in command to judge the relative altitude of another aircraft in flight. Further, the remote pilot will generally be limited to a maximum operating ceiling of 400 feet AGL, as specified in § 107.51(b), and the manned aircraft will likely be moving significantly faster than the small unmanned aircraft. As such, it is critical that the remote pilot in command not attempt to maneuver the unmanned aircraft to pass over, under, or ahead of a manned aircraft unless well clear, as doing so may present a hazard to the manned aircraft.

Several commenters, including the Property Drone Consortium, Southern Company, and several individuals generally focused on right-of-way situations involving two or more small unmanned aircraft. The Property Drone Consortium and two individuals questioned how two unmanned aircraft could yield the right of way to each other. Southern Company proposed that the FAA treat "conflicts between small UAS as conflicts between aircraft of the same category."

This rule will not treat conflicts between two small unmanned aircraft the same manner that the FAA has traditionally treated conflicts between two aircraft of the same category because the rules that apply to aircraft of the same category (§ 91.113(d) and (e)) are not easily applied to small UAS. For example, under § 91.113(d), when two aircraft of the same category are converging, the aircraft to the other's right has the right of way. For manned aircraft, it is easy for a pilot to distinguish whether an aircraft is to the pilot's right or left. For unmanned aircraft, however, a remote pilot's perspective depends on where the remote pilot is located on the ground relative to his or her small unmanned aircraft. Therefore, applying the traditional manned-aircraft right-of-way rules to small UAS may cause confusion.

Instead of imposing a specific right-of-way requirement on conflicts between two small unmanned aircraft, this rule will require the remote pilot in command to use his or her best judgment to avoid other small unmanned aircraft in the NAS. Specifically, under § 107.37(b), each remote pilot in command will have to take whatever maneuvers are necessary to ensure that his or her small unmanned aircraft is not flying so close to other unmanned aircraft as to create a collision hazard.

NAAA, Raebe Spraying Service, Boeing, the Property Drone Consortium, the Colorado Agricultural Aviation Association, and an individual expressed concern regarding the proximity of unmanned aircraft to manned-aircraft operations. Each commenter proposed resolving the conflicts with a specified range requirement. NAAA suggested that UAS operations be prohibited within a 2-mile vicinity of ongoing aerial application operations due to the seemingly unpredictable flight patterns and "unique nature of ag operations."

This rule will not impose a prescriptive numerical range requirement on small unmanned aircraft because the distance needed to remain well clear of another user of the NAS will vary depending on the specific small UAS and manned aircraft involved, as well as the operating environment. The FAA understands that agricultural operations may present seemingly unpredictable flight patterns to an observer. However, the visual-line-of-sight requirements of this rule ensure that the remote pilot in command will be able to visually observe the small unmanned aircraft at all times during the operation. This direct observation will allow the remote pilot to react appropriately to any other users in the NAS that may approach his or her small unmanned aircraft. The right-of-way requirements ensure that the remote pilot yields to any other users of the NAS and prioritizes the safety of people above preventing any damage to the small unmanned aircraft.

Aviation Management, State Farm, Prioria Robotics, and an individual commented on aspects of technology that would affect right-of-way rules. Aviation Management, State Farm, and another commenter suggested that the FAA modify the language of the rule to take into account prospective use of technology to aid in the deconfliction of manned and unmanned aircraft.

The FAA agrees that there is much promise for technology to aid in the deconfliction of manned and unmanned aircraft, but that technology (referred to as "sense and avoid" technology) is still in its infancy. As of this writing, the FAA does not have data indicating that sense and avoid technology has matured to the point needed to allow a small unmanned aircraft to reliably avoid a collision with a manned aircraft. The FAA notes that the visual-line-of-sight and see-and-avoid requirements of part 107 are both waivable and that the waiver process will allow the FAA to allow the use of sense-and-avoid technology on a case-by-case basis. The FAA intends to use the data acquired from the waiver process to inform future agency actions to further integrate small UAS into the NAS.

One commenter asked the FAA to amend proposed § 107.37(a)(2) to require the small unmanned aircraft to also avoid a collision with ground-based obstacles. The FAA declines to categorically limit how close a small unmanned aircraft may get to a ground-based obstacle. Some small UAS operations, such as bridge and tower inspections, may need to fly closely to a ground-based obstacle in order to successfully conduct the operation. Unlike collision with a manned aircraft, there could be instances where collision with a ground-based obstacle does not endanger human life. However, the FAA emphasizes the requirement of § 107.23(a), which prohibits a person from operating a small UAS in a careless or reckless manner so as to endanger the life or property of another.

d. Additional Technology/Conspicuity Requirements

While the NPRM did not propose to require any technological equipage for small UAS operating under part 107, several commenters suggested either adding these requirements to part 107 or otherwise recognizing small UAS that may be equipped with technology that mitigates the safety concerns underlying the provisions of part 107. Commenters also suggested imposing conspicuity requirements on small unmanned aircraft. For the reasons discussed below, this rule will not impose additional conspicuity requirements on small UAS operating under part 107 nor will it require those UAS to have any technological equipage. The FAA will consider any technologically based mitigations equipped on a small UAS as part of the waiver process.

i. ADS–B, Transponders, and TCAS

Some commenters, including Daniel Webster College, NAAA, CAPA, and the Air Medical Operators Association, stated that there should be a requirement for small UAS to be equipped with ADS–B. Daniel Webster College, NAAA, the California Aviation Agricultural Association, and the Colorado Aviation Agricultural Association (CoAAA) recommended an ADS–B Out equipment requirement to increase small UAS visibility. NAAA and CoAAA said ADS–B Out technology, or the like, should be required pending its effectiveness and usability to track UAS.

Several of the commenters who supported an ADS–B requirement addressed the availability of ADS–B systems for small UAS. NAAA and CoAAA stated that ADS–B Out equipment is currently available on the market for use in UAS. NAAA asserted that these units weigh as little as 300 grams and cost as little as $1,200. Airware also asserted that ADS–B Out transponders currently exist that are small and cost effective enough for small UAS. The company noted, however, that this technology is only suitable for uncontrolled airspace because transponders are not currently certificated by the FAA. One commenter said that a technologically and economically feasible option would be to use "the more inexpensive, heavy, and power-hungry ADS–B transponder[s]" by placing them on the ground near the operator. This would work, the commenter said, because most missions include a reliable command and control data link between a UAS and its ground operator.

Modovolate recommended ADS–B Out and In requirements for small UAS weighing between 20 and 55 pounds. The company noted that the purpose of ADS–B In (*i.e.*, equipment to receive and present ADS–B information to the small UAS operator) is to alert the operator to manned aircraft in the general vicinity, so that the operator can take precautionary action to avoid the manned aircraft once it is within the operator's line of sight. An individual similarly recommended that all small UAS over 1.5 kilograms should have a capability for ADS–B In for operators to be able to sense and avoid other aircraft.

Several commenters discussed an ADS–B requirement for small UAS in the context of the FAA's 2020 deadline for equipping manned aircraft with the same technology. The Air Medical Operators Association and Schertz Aerial Services recommended the same deadline be imposed for small UAS. Schertz Aerial Services said that five years "will provide an adequate amount of time for ADS–B Out to miniaturize and lower in cost, so that ADS–B Out can be more practically incorporated into UAS." The Metropolitan Airports Commission pointed out specifically that the 2020 deadline would apply to manned aircraft operating in Class B airspace, and recommended that FAA "strongly consider" an ADS–B Out requirement for small UAS operating in Class B airspace. The Commission noted that, because ADS–B equipment is developed in larger quantities, the cost to equip small UAS may become reasonable.

AMA and the Experimental Aircraft Association (EAA) also noted the 2020 deadline for manned aircraft to be equipped with ADS–B Out equipment, and said any requirement for ADS–B Out in small UAS should not "justify further equipment requirements for GA aircraft." The commenters stressed "the importance of maintaining the current timeline and requirements for ADS–B."

Several commenters recommended ADS–B requirements in certain circumstances. CAPA stated that ADS–B (along with TCAS with a mode S transponder) should be the minimum standard for UAS operations above 400 feet and within airport airspace. Another commenter said small UAS should have ADS–B Out to operate "within the Class B mode-C veil and/or inside Class D airspace." A few individuals said ADS–B should be required for all operations above a certain number of feet AGL—*i.e.*, 100 feet, 200 feet, and 400 feet AGL. Another individual proposed that ADS–B be "encouraged" for "small" UAS (*i.e.*, rotary craft less than 2 kg, fixed wing less than 6 kg), be required for "medium" UAS (*i.e.*, rotary craft, less than 4 kg, fixed wing 6–12 kg), and be required for "large" UAS (rotary craft less than 20 kg, fixed wing 12–24 kg).

The FAA acknowledges the concerns raised by the commenters, but notes that the risk associated with the operation of an aircraft need not always be mitigated through technological equipage. While there are benefits associated with technological equipage, there can also be significant costs in the form of installation, airworthiness certification (to ensure that the equipage is functional, reliable, and properly installed), maintenance, and, ultimately, replacement of the equipage. The FAA considered imposing equipage requirements in this rule, but ultimately decided against this because the risk associated with certain small UAS operations (*i.e.* the operations subject to part 107) can be mitigated through operational restrictions without any equipage requirements.

As discussed earlier, this rule mitigates the see-and-avoid risk associated with small UAS use by requiring that: (1) The small unmanned aircraft remain within visual line of sight; (2) the small unmanned aircraft yield right of way to all other users of the NAS; (3) the minimum flight visibility must be at least 3 statute miles; and (4) the small unmanned aircraft maintain a minimum distance away from clouds. The FAA recognizes that there are many small UAS operations that will seek to go beyond these operational parameters, and equipage requirements may be one measure that the FAA uses to mitigate the risk associated with those operations when it integrates them into the NAS.

However, as discussed earlier in this preamble, there are numerous small UAS operations that can be conducted within the operational parameters of part 107. By mitigating the risk associated with those operations through operational restrictions, this rule will realize the societal benefits of integrating the lowest-risk small UAS operations without imposing the costs associated with equipage requirements. The FAA also notes that many of the operational restrictions in this rule are waivable. Technology such as ADS–B may be a mitigation that a person uses to support his or her waiver application by showing that the operation could safely be conducted under the terms of a certificate of waiver.

Commenters including CAPA, the Professional Helicopter Pilots Association, the American Association for Justice, and the Center for Democracy and Technology, recommended the inclusion of a transponder requirement for small UAS. The American Association for Justice asserted that "[a]mple evidence exists to suggest that small UAS should be required to have transponders or other position tracking equipment to ensure our airspace remains safe." The association noted that in the last year, there have been at least 25 reports of near misses between commercial, passenger-carrying planes and UAS. According to the association, these reports indicated that, because the UAS do not have transponders and are too small to show up on radar or anti-collision warning systems, they appeared suddenly and only became visible when it is too late for the pilot of the manned aircraft to change course.

Another commenter said it was "not prudent" to only rely on "visual line of sight separation by a UAS team" to conduct operations in the NAS. "Inclusion of mini transponders created for UAS only," as well as the use of beacon lights and high visibility markings, the commenter continued, "should be a good start toward increasing the safety in the NAS." Another individual noted that operations in controlled airspace "would be enhanced by UAS specific transponders and TCAS equipment." Even with this technology, however, the commenter noted that operations in some locations within Class B, C, D and E airspace "might not be appropriate or allowed." The Professional Helicopter Pilots Association said operations in Class B airspace should only be permitted if the UAS is equipped with a "certified transponder or other certified multi-dimensional position-locating device" that is operational at least above 200 feet AGL. The association also said this requirement should eventually be applied to all UAS being flown in all U.S. airspace. Noting the absence of a transponder requirement for small UAS, the Human Factors and Ergonomics Society expressed concern about UAS inadvertently entering Class B airspace (particularly in places where Class G airspace underlies Class B airspace), although it did not go so far as to say a transponder should be required.

Several supporters of a transponder requirement addressed the availability of transponders for small UAS, which the NPRM stated are currently too large and too heavy to be used in small UAS. An individual commenter said transponder technology does not yet exist to be put on UAS. Several other individuals and Airware, on the other hand, said such technology does exist. One individual said there are manufacturers of miniature transponders on the market today and that all UAS should have such transponders, "so that ATC can track the operations to ensure safety of the NAS." Another individual said the "technical ability to provide a[] unique transponder signal for each aircraft exists at this time." The commenter said a transponder requirement will "lead to accountability," making it more difficult "for a headless operator to create a violation . . . without being identified." Another commenter said there are transponder/ADS–B units that are designed for small UAS and weigh 100 grams.

As of this writing, no small scale transponders have received FAA or FCC certification for use on small UAS. Additionally, as discussed earlier, the person maintaining visual line of sight of the small unmanned aircraft will have the same (if not better) ability to see incoming aircraft as a pilot onboard a manned aircraft. With regard to the near-misses (better known as near mid-air collisions) cited by the American Association for Justice, this rule will require the small unmanned aircraft to be the one to initiate a maneuver to avoid collision with a manned aircraft. Thus, there would be little safety benefit to requiring a small unmanned aircraft operating under part 107 to carry equipage to notify manned-aircraft pilots of its presence, as the manned aircraft pilots will not be required to yield right of way to the small unmanned aircraft.

Turning to concerns about operations in controlled airspace, this rule will prohibit small UAS operations in Class B, Class C, Class D, and within the lateral boundaries of the surface area of Class E airspace designated for an airport without prior authorization from the ATC facility having jurisdiction over the airspace. The FAA factors information such as traffic density, the nature of operations, and the level of safety required when determining whether to designate controlled airspace. The requirement for small UAS to receive approval from the ATC facility with jurisdiction over the airspace in which the remote pilot in command would like to conduct operations allows local ATC approval to provide a safer and more efficient operating environment.

Because these other provisions of part 107 provide a sufficient safety margin, a transponder equipage requirement is not necessary in this rule. In the aggregate, this regulatory framework equally accommodates all types of small UAS with the least complexity and burden, while ensuring the safety of the NAS.

Several commenters addressed applying certain provisions of part 91 stipulating that an aircraft cannot operate in controlled airspace unless it is equipped with an operable transponder and ADS–B equipment. WaDOT pointed out that, with some exceptions, § 91.215 requires registered aircraft to have an operational transponder when operating in controlled airspace. Transport Canada questioned whether the FAA would require UAS to carry transponders when operating in transponder-required airspace, or, alternatively, whether the FAA was considering either a relief to the requirement or a prohibition on small UAS operations in transponder-required airspace. GAMA stated that the transponder rules in § 91.215 and the ADS–B Out rules in §§ 91.225 and 91.227 apply to small UAS because they are aircraft according to 49 U.S.C. 40102(a)(6). GAMA expressed the view that small UAS must therefore meet the future transponder and ADS–B equipage requirements to operate in specified airspace despite the statements in the proposed rule that the FAA is not establishing equipment requirements for small UAS.

As the commenters pointed out, part 91 currently prohibits aircraft from entering certain airspace, such as Class B or C airspace, without a transponder.[88] Additionally, after January 1, 2020, a person will also need ADS–B equipment to enter certain airspace, such as Class B or C airspace.[89] However, part 91 gives ATC the ability to authorize aircraft to enter the pertinent airspace without the normally required transponder or ADS–B equipment.[90] Similarly, by requiring the remote pilot in command to obtain ATC authorization prior to flying the small unmanned aircraft into Class B, C, or D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport, this rule will provide ATC with the same authority that it has under part 91 to determine whether an aircraft operation lacking a transponder or ADS–B can safely be conducted in controlled airspace.

The City of Phoenix Aviation Department and CAPA stated that small UAS should also have or support some type of collision prevention equipment to assist the small UAS operator in maintaining a safe distance from manned aircraft in airspace adjacent to airports. Specifically, the City of Phoenix Aviation Department noted that small UAS wanting to operate adjacent to airports should support awareness enhancing equipment (collision prevention equipment). CAPA stated that a small UAS operating above 400 feet above ground level and within airport airspace should have TCAS with a Mode S transponder (in addition to anti-collision lighting and an ADS–B system).

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[88] *See* 14 CFR 91.215(b)(1).

[89] 14 CFR 91.225(d)(1).

[90] *See* 14 CFR 91.215(b) and 91.225(d).

Several individuals also supported a TCAS requirement for UAS. One commenter, for example, said "larger UVA [sic] aircraft" should be required to be equipped with transponders and TCAS, and that "the UAV should be programmed to automatically turn away from conflicting TCAS targets to avoid collision."

As discussed earlier, this rule will mitigate the risk associated with small UAS operations primarily through operational restrictions rather than more costly technological equipage requirements. Additionally, transponder equipment on small UAS to support TCAS on other aircraft may have adverse consequences to the NAS. The transponder spectrum is already significantly strained during peak traffic times in high density areas such as the Northeast corridor. Adding a potentially large number of small vehicles into this environment on transponder frequencies would potentially make these frequencies unusable for ATC and other users. The FAA needs to study the effects such operations will have on our existing ATC surveillance using ADS–B and secondary surveillance radar, and airborne surveillance operations using ADS–B, TIS–B and TCAS to determine whether the potential benefits of adding small UAS to this transponder spectrum would justify the potential costs to the NAS and its users.

ii. Radio Equipment

Southern Company supported the fact that the proposed rule did not establish a requirement for radio communications for small UAS operating in controlled airspace. The company stated that receiving local ATC approval and working closely with FAA could result in a safer and more efficient operating environment at minimal cost to the operator.

Conversely, Transport Canada questioned whether the statement in the NPRM that the proposed rule would not establish equipment requirements included radio equipment when operating in areas where ATC coordination/communication is a requirement. The commenter asserted that radio communication is a large contributor to the situational awareness of all pilots, and asked whether the FAA is considering mandating radio equipment, either on the aircraft or at the ground station, for operations in these areas.

The Professional Helicopter Pilots Association and NAAA went one step further, recommending that small UAS operations in controlled airspace be required to meet part 91 requirements, which include a requirement for two-way radio communication with ATC. The Professional Helicopter Pilots Association stated that, at a minimum, the operator of a small UAS flying in controlled airspace should be required to monitor ATC frequency in the area in order to maintain situational awareness.

The County of Los Angeles Department of Public Works recommended that FAA require small UAS operations to maintain two-way radio contact with ATC while operating in close proximity to an airport (airport influence area) or within Class B, C, or D airspace. PlaneSense and Cobalt Air similarly recommended that operators of small UAS operating in the airspace of an airport be required to have a radio to monitor air traffic at the airport and communicate with ATC.

The Port of Los Angeles encouraged the FAA to consider requiring operators of small UAS to have two-way radio capability during all operations, not just those occurring in controlled airspace. The commenter noted the importance of radio communication between pilots, saying that the ability of small UAS operators to communicate with pilots of manned aircraft is particularly critical due to the relatively small size of the small unmanned aircraft and the difficulty pilots of manned aircraft may have in seeing and tracking small unmanned aircraft while airborne. The Colorado Agricultural Aviation Association also recommended a more general requirement for all UAS operators to be trained and equipped with an aviation radio.

An individual said UAS weighing more than 10 pounds should be equipped with an FCC-approved VHF radio transmitter for the purposes of aiding identification from the ground or air, for manned-aircraft awareness of drone proximity, and to aid search and rescue operations. The commenter also recommended detailed specifications for the radio transmitter. Another commenter asked FAA to consider requiring that all small UAS transmit their GPS location, speed, and direction of flight on a shared radio channel. The commenter noted that the FLARM system used by glider pilots is capable of transmitting this, and other, information.

NAAA, PlaneSense, and Cobalt Air asserted that cost of radio equipment for small UAS is low. NAAA noted that UAS operators could obtain relatively low-cost ground-based radio equipment, as opposed to more costly aircraft-mounted systems. PlaneSense and Cobalt Air similarly asserted that the cost of a hand-held radio is not so expensive as to override the safety benefits of requiring its use in airport airspace.

As discussed in section III.E.5 of this preamble, this rule mitigates the risk between small UAS and manned aircraft in controlled airspace by requiring the remote pilot in command to obtain permission from ATC before entering Class B, C, or D airspace or the lateral boundaries of the surface area of Class E airspace designated for an airport. In considering whether to grant permission to a small UAS to fly in controlled airspace, ATC will consider the specific nature of the small UAS operation and risk the operation poses to other air traffic in that controlled airspace. ATC facilities have the authority to approve or deny aircraft operations based on traffic density, controller workload, communications issues, or any other type of operation that would potentially impact the safe and expeditious flow of air traffic. Additionally, as discussed in section III.F.2.f of this preamble, an applicant for a remote pilot certificate who does not possess a part 61 pilot certificate or has not completed a flight review within the previous 24 calendar months will be required to pass an initial aeronautical knowledge test that will include knowledge of radio communication procedures.

With regard to operations near an airport, as discussed in section III.E.5.e of this preamble, this rule will prohibit the small unmanned aircraft from interfering with air traffic at an airport. The FAA also notes that almost all airports in Class G airspace lack ATC facilities for the remote pilot in command to communicate with via radio. As such a prescriptive radio equipage requirement would not add sufficient risk mitigation to the other requirements of this rule (when taken as a whole) to justify the cost of imposing this additional requirement.

The FAA also declines to generally require small UAS operations to have radio equipage. As discussed earlier, this rule will require small unmanned aircraft to always yield the right of way. The remote pilot in command need not communicate with the manned-aircraft pilot to accomplish this task; the remote pilot can simply maneuver the small unmanned aircraft away from the manned aircraft. As such, requiring all small unmanned aircraft to carry radio equipment would be needlessly burdensome.

Turning to search and rescue operations, because this rule limits operations of small UAS to low altitudes within visual line of sight of the remote pilot and visual observer, the FAA does not anticipate that it will be necessary to conduct a search and rescue operation to find a small unmanned aircraft. Additionally, a small unmanned aircraft will not have any people onboard who would need to be found and rescued in the event of a crash.

The FAA acknowledges the usefulness of FLARM systems for gliders and UAS in foreign countries. However this technology has not been proven or certificated for use in the NAS. As such, the FAA will not mandate that this technology be equipped on small UAS operating under part 107.

Aerius Flight objected to the proposed rule's reliance on restricting operations to a confined area to mitigate the risks associated with a loss of positive control. The company asserted that this reliance fails to acknowledge that loss of positive control could result in a departure from the vertical boundaries of a confined area, which could be dangerous due to the nearly nationwide presence of low-level military training routes and low altitude special use airspace. With that in mind, Aerius recommended that the FAA conduct analysis of small UAS operations that may warrant a requirement that an operator have a mobile radio transceiver at the control station to contact ATC having authority for overlying airspace.

The FAA agrees that a radio transceiver may assist a remote pilot in responding to a loss-of-positive-control situation. However, a radio transceiver (or other technology) would not be a necessary mitigation for all situations and, thus, the FAA declines to impose it as a requirement. For example, a remote pilot in command could mitigate loss-of-positive-control risk through non-technological means by selecting an area of operation with natural obstacles such as trees or mountains that would stop the small unmanned aircraft from flying away if the remote pilot loses positive control of the aircraft. Because there is a wide variety of small UAS and small UAS operations, this rule will not mandate a specific means of mitigating loss-of-positive control risk. Instead, this rule will require the remote pilot in command to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft and will allow the remote pilot to select the specific method of achieving this result within the confined area of operation.

iii. Lighting

Several commenters, including the Air Medical Operators Association, AirTractor, and CropLife America, recommended that FAA require small unmanned aircraft to be equipped with strobe lights to increase visibility. NAAA, Colorado Agricultural Aviation Association, Reabe Spraying, and Plu's Flying Service recommended a strobe light requirement for both the small unmanned aircraft and its associated operator's ground vehicle. GAMA suggested that FAA "undertake a specific review" to consider, among other things, "whether specific additional steps should be taken to increase visibility of small UAS for agricultural pilots," including through the use of equipment such as strobe lights. Another commenter asserted that technology is commercially available to equip even the smallest UAS with an 8 gram LED strobe light, which can be powered off a ship's battery beyond the duration of flight.

Remote pilots can effectively see-and-avoid other aircraft during daytime operations without an additional lighting requirement. By keeping the unmanned aircraft within visual line of sight of the remote pilot in command and visual observer with sufficient visibility, the remote pilot in command will be able to see the relatively large manned aircraft that may be entering the area of operation. The remote pilot in command will then have to give right of way to manned aircraft and ensure that the unmanned aircraft does not pose a hazard to aircraft operating nearby. While remote pilots are encouraged to make their aircraft as visible as possible, the diverse range of aircraft that may operate under part 107 make prescriptive lighting requirements for all types of operations impractical. Thus, as described in section III.E.2.c.i of this preamble, the FAA will only require lighting for small unmanned aircraft operating during periods of civil twilight.

The Professional Helicopter Pilots Association suggested requiring small UAS to be equipped with a lighting system "intense enough to be visible during daylight and under bright sunlight conditions." An individual stated that each UAS should have "identification beacon lights," which are unique to UAS but similar to manned aircraft. The United States Ultralight Association said UAS should be required to have a "visual anti-collision beacon" that will make the UAS visible for 3 miles during daylight operations.

Due to the diverse nature of small unmanned aircraft, intense lighting systems may prove impractical in many cases due to weight and size limitations. As discussed in the previous section, the remote pilot in command is directly responsible for yielding the right of way to any manned aircraft and ensuring that the small unmanned aircraft will pose no undue hazard to other aircraft. Further, the remote pilot must fly the aircraft in such a way that the pilot or the visual observer is able to observe the airspace for other conflicting traffic. Because the remote pilot will have the ability to see and avoid other aircraft under the visual-line-of-sight framework of part 107, this rule will not require lighting during daytime operations.

A few commenters recommended requirements for specific lighting color schemes. Two individuals recommended requiring green and red lights. One of those commenters noted that this is the standard for marine navigation lights, which enables other vessels to determine if a ship is approaching or departing and if it is moving left or right. The other commenter also recommended the use of white lights for landing and white flashing lights for emergency situations. Another individual asserted that hobbyists already use high-intensity LED and/or strobe lights for orientation assistance, and that blue and red provide the greatest contrast on small models. Yet another commenter recommended "a pattern of 3 rapid red (.5 second intervals) a 1 second delay then 3 rapid white" while the pilot is in control, and in the event of a lost link, "a continuous red white at .5 second intervals to indicate that the pilot has no command."

Position and navigation lights on an aircraft allow other pilots to observe the visible lights and determine the relative position of the aircraft and direction of flight. For many small unmanned aircraft, such as quadcopters, there is not a clearly defined relative position on the aircraft, so navigation lights would not be practical. The FAA disagrees that lighting requirements are necessary for an emergency situation because the risk associated with loss of aircraft control is mitigated by the other provisions of this rule.

To ensure airspace division near airports, CAPA recommended requiring small UAS operating above 400 feet and within airport airspace to have minimum equipment requirements, including "anti-collision lighting." However, as discussed in section III.E.3.a.ii of this preamble, with one exception, this rule will not allow small unmanned aircraft to operate higher than 400 feet AGL. With regard to airports, remote pilots operating in the vicinity of airports, heliports, or seaplane bases in uncontrolled airspace may not operate a small unmanned aircraft in a manner that interferes with operations and traffic patterns. Further, the small unmanned aircraft may not enter controlled airspace without ATC permission.

iv. Conspicuity

Many commenters asserted that small unmanned aircraft may be difficult to see, both from the ground and from other aircraft operating in the NAS. For example, ALPA pointed out that many models of UAS are monochromatic or nearly so (either all black or all white), making them difficult to see against a non-contrasting background. The association urged FAA to develop conspicuity standards or advisory material discussing the factors influencing the ability to maintain visual contact.

Another commenter stated that a commercial UAS is likely more difficult to see than other R/C model aircraft because model aircraft are usually painted with bright colors and flown in predictable locations. This commenter also said quadcopters and hexacopters, in particular, may be harder to see due to their ability to move very slowly and hover. The commenter added that these types of small unmanned aircraft are capable of climbing directly into the flight path of a manned aircraft, which may not see them because they are in an area obstructed by the nose of the manned aircraft.

To resolve these issues, a number of commenters, including CoAAA, the California Agricultural Aircraft Association (CAAA), and the Permanent Editorial Board of the Aviators Model Code of Conduct Initiative, recommended a requirement for small unmanned aircraft to be coated in "highly visible" or "high visibility" colors to contrast them from surrounding airspace and the ground. NAAA argued that FAA should require colors that make the unmanned aircraft "readily distinguishable" from the background.

NAAA pointed out that the FAA's advisory circular on obstruction marking and lighting recommends "[a]lternate sections of aviation orange and white paint should be used as they provide maximum visibility of an obstruction by contrast in colors." CAAA and Raebe also supported standardized markings of white and orange paint. Schertz Aerial Services recommended a paint scheme where the underside of the UAS is painted black, the top is painted mostly white, and at least two areas of the UAS are painted "florescent/aviation orange." An individual suggested alternating aviation orange and red paint. Another individual recommended bright neon orange, red, or green.

The FAA currently has no data indicating what color(s), if any, would enhance the conspicuity of small unmanned aircraft. Small unmanned aircraft operating under part 107 vary significantly by size, shape, and profile. As such, color patterns viable for one unmanned aircraft may not work for another unmanned aircraft. Additionally, contrasting colors cannot always be seen with varying light, weather, and cloud coverage, nor will specific colors always provide a contrasting effect. Very small unmanned aircraft also may not have the surface area or reflectivity to accept color patterns that would easily be seen by others not involved with the operation.

Because of these considerations and in light of the fact that the risk of a midair collision is mitigated by the other provisions of this rule, the FAA will not require small unmanned aircraft to be painted in a specific color scheme. However, this rule does not restrict small UAS owners or remote pilots in command from painting a small UAS in a conspicuous manner if doing so would increase safety in their specific operating environment. The FAA will consider any conspicuity-enhancing measures as a potential mitigation in support of an application for a waiver from the operating restrictions of part 107.

3. Containment and Loss of Positive Control

As discussed above, one of the issues unique to UAS operations is the possibility that during flight, the remote pilot in command may become unable to directly control the unmanned aircraft due to a failure of the control link between the aircraft and the remote pilot's control station. This failure is known as a loss of positive control. Because the remote pilot's direct connection to the aircraft is funneled through the control link, a failure of the control link could have significant adverse results.

To address this issue, the NPRM proposed a performance-based standard built around the concept of a confined area of operation. Confining the flight of a small unmanned aircraft to a limited area would allow the remote pilot in command to become familiar with the area of operation and to create contingency plans for using the environment in that area to mitigate the risk associated with possible loss of positive control. For example, the remote pilot in command could mitigate loss-of-control risk to people on the ground by setting up a perimeter and excluding people not involved with the operation from the operational area. The remote pilot in command could also mitigate risk to other aircraft by notifying the local air traffic control of the small UAS operation and the location of the confined area in which that operation will take place.

The following subsections discuss the concepts involved in the confined area of operation. Those concepts consist of: (1) The boundaries of the confined area of operation, and (2) mitigation of loss-of-positive-control risk within the confined area of operation.

a. Confined Area of Operation Boundaries

The following subsections discuss: (1) The horizontal boundary of the confined area of operation and moving vehicles; and (2) the vertical boundary (maximum altitude) of the confined area of operation.

i. Horizontal Boundary and Moving Vehicles

With regard to the horizontal boundary of the confined area of operation, the visual-line-of-sight requirement discussed in section III.E.2.a of this preamble will create a natural horizontal boundary on the area of operation. Due to the distance limitations of human vision, the remote pilot in command or visual observer will be unable to maintain visual line of sight of the small unmanned aircraft sufficient to satisfy § 107.31 if the aircraft travels too far away from them. Accordingly, the visual-line-of-sight requirement in § 107.31 will effectively confine the horizontal area of operation to a circle around the person maintaining visual contact with the aircraft with the radius of that circle being limited to the farthest distance at which the person can see the aircraft sufficiently to maintain compliance with § 107.31.

However, one way in which the horizontal area-of-operation boundary tied to the remote pilot in command's line of sight could be expanded is for the remote pilot to be stationed on a moving vehicle or aircraft. If the remote pilot is stationed on a moving vehicle, then the horizontal area-of-operation boundary tied to the remote pilot's line of sight would move with the pilot, thus increasing the size of the small unmanned aircraft's area of operation. To prevent this scenario, the NPRM proposed to prohibit the operation of a small UAS from a moving aircraft or land-borne vehicle. However, the FAA included an exception for water-borne vehicles in the NPRM reasoning that there are far fewer people and less property located on or over areas of water than on land. Consequently, a loss of positive control that occurs over water would present a significantly smaller risk of injuring a person or damaging property than a loss of positive control that occurs over land.

For the reasons discussed below, this rule will maintain the proposed prohibition on operating a small UAS from a moving aircraft. This rule will, however, allow operation of a small UAS from a moving land-based or water-borne vehicle if the small unmanned aircraft is flown over a sparsely populated area. The prohibition against operating a small UAS from an aircraft and the limitations on operations from moving vehicles will be waivable as long as the small unmanned aircraft is not transporting another person's property for compensation or hire.

Several commenters, including ALPA, Aerius, and Drone User Group Network, concurred with the FAA that the operator should not be allowed to operate the small UAS from a moving vehicle or aircraft. NetMoby said the next generation of regulations can address this type of operation once a large database of information concerning the first generation of UAS operations has been developed. CAPA argued that the final rule should prohibit operation from all moving vehicles, including watercraft. The Professional Society of Drone Journalists stated that operations from any moving vehicle should only be permitted with special training and safeguards.

A large number of other commenters, including MPAA, NAMIC, EEI, and MAPPS, specifically opposed a blanket prohibition on operations from moving land-based vehicles. AIA said that FAA should conduct "robust" risk analysis to determine if small UAS can be operated safely from moving land-based vehicles. NBAA stated that the FAA has not sufficiently justified the proposed prohibition of operations from moving land-based vehicles.

Commenters provided a variety of reasons for why small UAS operations should be permitted from moving land-based vehicles. Modovolate asserted that such operations may be safer than operations from a stationary position because the operator can maintain a position closer to the small UAS. The Associated General Contractors of America and UPS claimed that operations from a land-based moving vehicle can be as safe as operations from a water-based moving vehicle, noting that both types of operations could lead to the small UAS flying over land. Vision Services Group said that allowing operations from a moving vehicle (with authorization from ATC or a COA issued by the FAA) will give the FAA an opportunity to begin collecting documentation on the safety of such operations in low-risk scenarios, as well as give commercial and public entities an opportunity to test the technology and practicality of moving land/water-based ground station operations.

Several commenters pointed to the beneficial operations that could be conducted if small UAS operators are permitted to extend the visual line of sight by operating from a moving land-based vehicle. EEI, Exelon Corporation, and Southern Company pointed to the inspection of objects that extend for miles, such as power lines, pipelines, railway lines, highways, and solar and wind farms as such beneficial operations. State Farm pointed to surveying catastrophe scenes. Aviation Management pointed to safety scouts leading and surveying railroad tracks in front of trains, and surveying for road hazards in front of trucks and emergency vehicles. Vision Services Group pointed to wetland and shoreline monitoring, and Modovolate pointed to photography and motion picture filming as beneficial operations that could be conducted from a moving land-based vehicle.

The proposed rule would have allowed operation from watercraft due to the fact that water is typically sparsely populated. However, that is not always the case because some waterways are constantly or intermittently congested with watercraft, float planes and people. On the other hand, as pointed out by the commenters, not all land areas are congested; some areas of land, such as unpopulated areas or large open fields, are sparsely populated. "Sparsely populated" is not defined in FAA regulation—rather, it is typically fact-dependent. In a 2010 legal interpretation, the FAA cited *Mickalich* v. *United States,* 2007 WL 1041202 (E.D. Mich.) for a discussion of what constitutes a sparsely populated area.[91] The court found that twenty people on a ten acre site would be considered sparsely populated under 14 CFR 91.119(c). Additionally, in other legal opinions by the FAA, the agency has emphasized that it would adopt a case-by-case analysis in determining when a pilot violates § 91.119, which includes determining when an area is "sparsely populated."[92]

In reviewing the comments and reexamining its proposal, the FAA determined that the safety-relevant factor for the moving-vehicle provision of part 107 is population density not terrain. Therefore, this rule will allow small UAS operation from moving land- or water-based vehicles, as long as the small unmanned aircraft is flown over sparsely populated land or water areas.[93] The FAA anticipates that this change will enable additional small UAS operations such as utility inspection, disaster response, and wetland and shoreline monitoring.

A number of commenters, including ALPA, AUVSI, American Insurance Association, and MPAA, said operations from moving land-based vehicles should be permitted as long as the operator is not also driving the vehicle.

As discussed previously, this rule will allow operation of small UAS from land and water-based vehicles over sparsely populated areas. However, the FAA emphasizes that this rule will also prohibit careless or reckless operation of a small UAS. The FAA considers flying a small UAS while purposely distracted by another task to be careless or reckless. The FAA cannot envision at this time an instance of a person driving a vehicle while operating a small UAS in a safe manner that does not violate part 107. Additionally, other laws, such as State and local traffic laws, may also apply to the conduct of a person driving a vehicle. Many states currently prohibit distracted driving and State or local laws may also be amended in the future to impose restrictions on how cars and public roads may be used with regard to a small UAS operation. The FAA emphasizes that people involved in a small UAS operation are responsible for complying with all applicable laws and not just the FAA's regulations.

Planehook argued that until such time as sense-and-avoid systems are accepted by the FAA, implemented by manufacturers, and installed by trained operators, operations from moving land-based vehicles should only be permitted by waiver. Commenters including the Small UAV Coalition, State Farm, Aviation Management, and DJI also said that small UAS operations should be permitted from moving land-based vehicles on a case-by-case basis, via waiver or deviation authority. Skycatch and FLIR Systems recommended allowing operations from moving land-based vehicles as long as the UAS features a software protocol that ensures the operator is present and has positive control. An individual recommended allowing operations from moving land-based vehicles as long as the UAS is equipped with a telemetry system so the operator knows the range/bearing of the UAS. Another individual recommended allowing operations from moving land-based vehicles if the UAS is operating in "follow-me" mode.

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[91] *Legal Interpretation to Leanne Simmons* (2010).

[92] *Legal Interpretation to Gary S. Wilson* (2006); *Legal Interpretation to Anderson* (2009).

[93] The FAA notes that the small unmanned aircraft flight will also have to comply with all other applicable requirements of this rule, including the prohibition on flight over people who are not directly participating in the small UAS operation (discussed in section III.E.3.b.iv of this preamble).

The primary risk associated with an operation from a moving vehicle is that the remote pilot in command will lose positive control of the small unmanned aircraft and that aircraft will collide with a person on the ground. Part 107 mitigates this risk by restricting small UAS operations from moving vehicles to sparsely populated areas, which generally have a very low population density. Thus, there is no need to impose additional restrictions on moving-vehicle operations in a sparsely populated area. The FAA considered eliminating the sparsely populated restriction but ultimately determined that operations from a moving vehicle over an area that is not sparsely populated pose a higher risk to non-participating persons and property due to changing topography, obstructions, and un-anticipated persons that enter/exit the operational area.

However, the FAA acknowledges that technological innovation may allow small UAS to be operated safely from moving vehicles in areas that are not sparsely populated. Accordingly, the restriction on operation from moving vehicles will be waivable. The FAA will consider waiver applications on a case-by-case basis to determine whether the applicant has established that his or her operation can safely be conducted under the terms of a certificate of waiver. However, as discussed in section III.C.1 of this preamble, the FAA will not grant a waiver to allow the use of a moving vehicle to allow UAS-based transportation of another person's property for compensation or hire.

One individual suggested that the FAA consider allowing operation of small UAS from a moving aircraft.

In most instances, a manned aircraft is not as maneuverable and cannot be stopped in flight with the same ease as a land- or water-based vehicle. Thus, a remote pilot in command who is onboard a manned aircraft in flight has a more limited ability to respond to situations that may arise during the small UAS operation. Additionally, because manned aircraft generally operate at significantly higher speeds than small unmanned aircraft, there is a higher likelihood that a remote pilot in command onboard a manned aircraft will lose sight of the small unmanned aircraft. Accordingly, this rule will retain the proposed prohibition on operating a small UAS from a moving aircraft. This prohibition will, however, be waivable if the remote pilot in command demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.

ii. Vertical Boundary (Maximum Altitude)

Next, we turn to the vertical boundary of the confined area of operation. Because most manned aircraft operations take place higher than 500 feet above ground level (AGL), the NPRM proposed a 500-foot operating ceiling for small UAS operations. For the reasons discussed below, this rule will reduce the operating ceiling to 400 feet AGL unless the small unmanned aircraft: (1) Is flown within a 400-foot radius of a structure, and (2) does not fly higher than 400 feet above the structure's immediate uppermost limit. This operating-ceiling provision will be waivable.

Several commenters, including the Professional Photographers of America, ALPA, Boeing, Google, and State Farm, supported the 500-foot altitude limit proposed in the NPRM. Some noted that a 500-foot ceiling for UAS operations would strike a positive balance between flexibility for the UAS operator and the safety of manned aircraft operating in the NAS.

Other commenters, including Barrick Gold of North America, argued that the altitude restrictions in the rule are unnecessary because the current airspace stratification and operating rules already provide the requisite level of safety. Barrick added, however, that it would support a buffer of 200 feet below the terminus of Class G airspace.

An altitude limit for small UAS operations is necessary in this rule. Given the expected proliferation of small UAS in the NAS, and the safety implications for manned aircraft, the FAA must address the safe use of small UAS in the NAS. Moreover, Congress has directed the FAA to establish a regulatory framework to safely integrate small UAS operations into the NAS. Allowing unrestricted small unmanned aircraft to operate at high altitude without the benefit of additional equipment (for example, transponders and altimeters) and the provision of air traffic services introduces a significant threat of collision to manned aircraft operating in the NAS. Most manned aircraft operations transit the airspace at or above 500 feet AGL, and an altitude limitation provides a necessary barrier between small unmanned aircraft and a significant majority of manned aircraft operations in the NAS. However, as discussed below, this rule will make an exception to the altitude restriction for small UAS operations that are conducted close to a structure.

Other commenters, including Northrop Grumman Corporation, AOPA, EAA, and HAI, recommended a reduction in the proposed 500-foot altitude limit. These commenters were concerned about the potential for conflict with manned aircraft operating in the NAS. The United States Ultralight Association and the U.S. Hang Gliding and Paragliding Association expressed general concern regarding the volume of manned aircraft traffic below 500 feet and the potential for collisions with small unmanned aircraft.

While some commenters did not recommend a specific alternate maximum altitude, most that did favored a 400-foot operating ceiling. Commenters offered a variety of reasons to support a 400-foot altitude limit. One commenter justified a lower altitude by noting it is difficult for the operator to maintain visual contact with the small unmanned aircraft when operated above 500 feet, and a 400-foot limit would provide an added margin of safety. Most commenters stated that a 400-foot altitude limit would provide a reasonable buffer between UAS and manned aircraft operating in the NAS. NAAA remarked that recent narrowly averted collisions involving agricultural aircraft and UAS aircraft justify the establishment of a 400-foot limit. NAAA also noted the importance of the missions performed by aircraft at lower altitude, including agricultural and air ambulance operations. Northrop Grumman and the Aviation Division of the Washington State Department of Transportation asserted that a 500-foot altitude does not provide an adequate buffer between UAS operations and those conducted by manned aircraft.

Other commenters, including the North Central Texas Council of Governments, noted that the 100-foot difference between the limits for model aircraft and UAS aircraft, which would result from the proposed 500-foot altitude ceiling, would create confusion. These commenters pointed out that because it is difficult to distinguish between UAS and model aircraft, the two should have similar altitude restrictions.

Some commenters identified lower ceilings for UAS operations in other countries. For example, one commenter noted that Australia has established a 400-foot limit for UAS operations. Further, Transport Canada cited a similar approach for UAS operations in Canada, noting that a 400-foot operating ceiling provides a margin of safety that considers barometric altimeter error and cold weather temperature corrections.

Some commenters, however, asserted that even a 400-foot maximum altitude is too high. The Professional Helicopter Pilots Association recommended a limit of 200 feet to provide an adequate altitude buffer between UAS and rotorcraft operations. One commenter suggested a 200-foot limit until ADS–B is mandated for UAS. Positive air traffic control was also recommended as a requirement for operations above 200 feet.

In contrast, several commenters, including those from the media and agricultural communities, asserted that the proposed 500-foot altitude limit for small unmanned aircraft operations is overly restrictive. One commenter stated that the 500-foot altitude ceiling increases the risk for striking terrain, power lines, or other structures. A commenter also noted that the proposed altitude restriction may contribute to a loss of communication with the aircraft due to terrain and other obstructions.

The most frequently cited reason for raising the altitude limit was to allow the small unmanned aircraft to more effectively perform missions such as search and rescue, aerial surveys, and other applications for industries ranging from agriculture to petroleum, as well as inspections of buildings, bridges and other structures. In addition, several commenters asserted that a 500-foot limit is impractical for radio-controlled soaring. Aerobatic operations would also be severely limited by a 500-foot restriction.

Other commenters highlighted the needs of the media industry, remarking that a 500-foot restriction limits the utility of UAS for certain newsgathering operations. Commenters noted that for these activities, the ability to operate at higher altitudes increases their ability to film news events and access other areas beyond normal reach.

Some commenters, including the Nebraska Farm Bureau Federation, suggested that the 500-foot operating ceiling could be lifted under certain circumstances in remote areas given the uncongested airspace above remote areas. The American Petroleum Institute agreed that a case-by-case process is needed for approval to fly at higher altitudes. In its comments, API noted that the proposed rule effectively eliminates lower-resolution surveillance operations where larger ground sample distances would have value for a variety of activities over broad areas, such as pipeline right-of-way surveying and metocean (meteorology and physical oceanography used in offshore and coastal engineering) data gathering. In addition, in areas with high vegetation, this restriction acts to limit distances across which pre-programmed flights may function even if the visual-line-of-sight restriction were modified. One commenter noted this would be similar to what is now codified in 14 CFR 91.119(b) and (c), and to the precedent established by 14 CFR part 101.

Many commenters, such as Boeing and the News Media Coalition, also focused on the need to permit higher operating altitudes in proximity to certain structures. This would allow small unmanned aircraft to be used to perform inspections and other tasks that would traditionally place persons in harm's way. The Exelon Corporation noted the need to allow for inspection of tall structures. An individual recommended that the FAA allow operations at higher altitudes within a 2,000-foot radius of certain towers. NoFlyZone.org asserted that UAS operations above 500 feet should be permitted within 250 feet of a structure as long as the operator has permission from that structure's owner. Skycatch asked that operations above 500 feet be permitted under specific circumstances, such as bridge or building inspections as proposed by AUVSI. The Professional Society of Drone Journalists stated that the airspace above and around buildings should be considered to be the domain of legal UAS operations.

Commenters also recommended mechanisms to allow operations above 500 feet ranging from pilot training and equipment requirements (such as transponders and ADS–B), to the establishment of flight restriction areas or a waiver process. The American Insurance Association requested that UAS aircraft be allowed to operate above 500 feet if accompanied by a visual observer on the ground aided by a mechanical enhancement of his or her sight.

Other commenters noted that an increase in altitude may be appropriate in areas where the threat to manned aircraft is minimal. For example, one commenter proposed that in Class G airspace, the ceiling for UAS operations be raised to the base of the overlying controlled airspace. A variety of other altitudes were proposed. Clean Gulf Associates stated that 1,000 feet is an appropriate altitude, allowing for oil spill skimming targeting operations, where the mid-air threat over water is lower. Prioria Robotics also proposed 1,000 feet. The American Fuel & Petrochemical Manufacturers noted that technical developments in the near future will allow for operations up to 1,000 feet with additional equipage and procedural safeguards. Another commenter stated that if an under-10-pound category of UAS aircraft could be created, an altitude of 1,000 feet should be permitted.

Another commenter offered that an increase in maximum altitudes is appropriate as size of the UAS aircraft increases. For example, a rotorcraft up to 4 kgs or a fixed-wing aircraft between 6 and 12 kgs would be able to fly up to 700 feet AGL. Rotorcraft up to 20 kgs and fixed wing up between 12 and 24 kgs would be able to fly up to 3,000 feet AGL. These altitude limits would be accompanied by pilot medical and training requirements, as well as additional equipage requirements, such as ADS–B.

One commenter noted that the rule is harsh toward non-hazardous UAS operations. This commenter argued that low-altitude quad copter operations should be given relief to operate at altitudes similar to those used for a commercial moored balloon or kite.

The Resource Stewardship Consortia proposed an extension up to 1,400 feet for a proof of concept trial performed in places where the threat of collateral damage is minimal should a failure occur, and for operations that would benefit from a higher altitude.

In response to comments addressing the specific altitude limit, the FAA agrees that a 400-foot ceiling will allow for a significant number of applications for the small UAS community, while providing an added level of safety for manned-aircraft operations. A ceiling of 400 feet AGL will provide an additional 100-foot margin of safety between small UAS operations and a majority of aircraft operations in the NAS. This additional 100-foot buffer will help maintain separation between small unmanned aircraft and most manned aircraft in instances such as the remote pilot losing positive control of the small unmanned aircraft or incorrectly estimating the altitude of the aircraft.

Further, the revised limit addresses other concerns regarding potential confusion between model aircraft and small unmanned aircraft. Specifically, limiting operations to 400 feet is consistent with FAA guidance on model aircraft best practices identified in AC

91–57A, thus standardizing operating altitudes for the majority of small unmanned aircraft flying in the NAS. A 400-foot altitude ceiling is also consistent with the approach adopted in other countries. Specifically, Canada, Australia, and the United Kingdom all set a 400-foot or lower altitude limit on UAS operations conducted in those countries.[94]

While the FAA considered the lower altitudes proposed by commenters, it ultimately determined that these lower limits would unnecessarily restrict small UAS operations without a commensurate increase in safety because the concentration of manned aircraft below 400 feet AGL is much lower than the concentration of manned aircraft at or above 500 feet AGL. The FAA also considered the comment recommending positive air traffic control above 200 feet. The FAA ultimately rejected this recommendation because it is overly burdensome to both remote pilots and the air traffic control system. Air traffic controllers could not reliably provide positive separation for operations at this altitude throughout the NAS, and the benefits to users from such separation efforts would not justify the significant additional workload placed on air traffic controllers or the equipment and training costs to remote pilots. In addition, without additional equipment mandates, the provision of positive air traffic control would be unachievable.

To address the concerns expressed by commenters requesting higher operating altitudes in proximity to buildings, towers, power lines, and other tall structures for the purposes of inspections and repair, the FAA is establishing new provisions in the final rule that will enable those operations in a way that does not compromise aviation safety. Specifically, the FAA notes that 14 CFR 91.119 generally prohibits manned aircraft from operating in close proximity to structures. Section 91.119 requires manned aircraft to stay 500 to 1,000 feet away from the structure, depending on whether the area is congested. Because manned aircraft are not permitted to operate in close proximity to structures, this rule will allow a small unmanned aircraft to fly higher than 400 feet AGL as long as that aircraft remains within a 400-foot radius of a structure up to an altitude of 400 feet above the structure's immediate uppermost limit. Allowing higher-altitude small UAS operations within a 400-foot lateral limit of a structure will enable additional operations (such as tower inspection and repair) while maintaining separation between small unmanned aircraft and most manned aircraft operations.

The FAA disagrees that a further increase in altitude is justified. Higher-altitude small unmanned aircraft operating in airspace that is transited by most manned aircraft operations would no longer be separated from those manned aircraft, which would greatly increase the risks of a collision. Most remote pilots of small UAS would also benefit very little from an additional increase in altitude because the visual-line-of-sight restrictions of this rule and the equipment limitations of a small UAS would, in many cases, limit the ability or need to operate at altitudes higher than what is provided for by this rule. Such a limited benefit would not be commensurate with the added risk that a higher altitude would impose upon other users of the NAS.

However, the FAA recognizes that new technologies may increase the feasibility of higher altitude operations. Therefore, to provide flexibility to accommodate new developments, the altitude limitation of this rule will be waivable. Thus, if a remote pilot demonstrates that his or her high-altitude small UAS limitation will not decrease safety, the FAA may allow that operation through a certificate of waiver. This will enable a number of operations, such as research and development for higher-altitude small UAS operations. The FAA is committed to working with the stakeholder community to pursue such options when it is deemed appropriate.

With regard to search and rescue operations, most of these operations are conducted by government entities under COAs as public aircraft operations. Those operations will therefore not be subject to the altitude limitations of this rule.

Several commenters raised concerns regarding a remote pilot's ability to discern the altitude of the small unmanned aircraft. Commenters including AOPA and GAMA asserted that current UAS lack accurate altimetry systems, making compliance with any altitude restriction difficult. GAMA asked that the FAA clarify how an operator determines the UAS altitude in flight. Similarly, one individual stated that while the altitudes proposed in the rule are in principle sound, they are unenforceable. Other commenters asserted that it is impossible to judge altitude, particularly over precipitous terrain, and that altitude restrictions of any kind may only be relied upon if UAS were required to have altitude-limiting devices. The Permanent Editorial Board of the Aviators Model Code of Conduct proposed that the FAA require the use of a practical technique for UAS operators to estimate their altitude with sufficient accuracy or require the use of a technical solution to ensure compliance.

Remote pilots have effective techniques to determine altitude without mandating the installation of an altimetry system. For example, with the unmanned aircraft on the ground, a remote pilot in command may separate him or herself 400 feet from the aircraft in order to gain a visual perspective of the aircraft at that distance. Remote pilots may also use the known height above the ground of local rising terrain and/or structures as a reference. The FAA acknowledges that these methods of estimating altitude are less precise than equipment-based altitude determinations, which is one of the reasons this rule will increase the separation between manned and small unmanned aircraft by reducing the maximum altitude for small unmanned aircraft to 400 feet AGL.

Additionally, the FAA will provide, in its guidance materials, examples of equipment options that may be used by remote pilots to accurately determine the altitude of their small unmanned aircraft. One example is the installation of a calibrated altitude reporting device on the small unmanned aircraft. This device reports the small unmanned aircraft's altitude above mean sea level (MSL). By subtracting the MSL elevation of the control station from the small unmanned aircraft's reported MSL altitude, the aircraft's AGL altitude may be determined. The installation of a GPS altitude-reporting device may also provide for a requisite level of altitude control. The FAA emphasizes, however, that this equipment is simply one means of complying with the altitude restrictions in this rule.

One commenter asked if the proposed 500-foot limit represents the altitude above the launch point or the height of the UAS altitude above the ground. The commenter noted that some topographical features present dramatic changes in altitude. Glider operators raised similar questions regarding altitude over sloping terrain.

The maximum altitude ceiling imposed by this rule is intended to limit the height of the aircraft above the ground over which it is flying (AGL). It is incumbent upon the remote pilot in command to maintain flight at or below this ceiling regardless of the topography.

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[94] United States Government Accountability Office, *Unmanned Aerial Systems: FAA Continues Progress toward Integration into the National Airspace*, at 32 (July 5, 2015).

Several commenters stated that the 500-foot altitude restriction does not address the public's expectation that airspace (up to 500 feet) above private property is under their control and may not be penetrated without permission. Event 38 Unmanned Systems stated that the FAA should attempt to set a reasonable altitude requirement for overflight of property not controlled by any UAS operator. This commenter proposed a 100-foot limit for incidental incursions and a 300-foot limit for intentional flight across private property without permission. Another commenter suggested requiring small UAS to operate between 400 and 500 feet AGL when flying above private property, unless the remote pilot has obtained the property owner's permission. Other commenters, including the NJIT Working Group and the Kansas Livestock Association, commented on the relationship between the final rule requirements and trespass and nuisance protections for private landowners.

Adjudicating private property rights is beyond the scope of this rule. However, the provisions of this rule are not the only set of laws that may apply to the operation of a small UAS. With regard to property rights, trespassing on property (as opposed to flying in the airspace above a piece of property) without the owner's permission may be addressed by State and local trespassing law. As noted in section III.K.6 of this preamble, the FAA will address preemption issues on a case-by-case basis rather than doing so in a rule of general applicability.

The North Central Texas Council of Governments opposed a 500-foot maximum altitude, stating it is inconsistent with Public Law 112–95 and the 400-foot ceiling identified in Advisory Circular (AC) 91–57.

Public Law 112–95 directs the Department to establish requirements for safe integration of UAS operations into the NAS but does not specify the altitude parameters of such operations. AC 91–57A is advisory in nature and pertains to model aircraft not subject to part 107. However, the 400-foot maximum altitude imposed by this rule is similar to the 400-foot maximum altitude suggested as a best practice for modelers by AC 91–57A.

One commenter stated that the COA process should be maintained for operations outside of class G airspace and altitudes above 500 feet. However, with the exception of flight that is within 400 feet of a structure, small unmanned aircraft seeking to fly higher than 400 feet AGL will have to obtain a waiver to do so.

Several commenters recommended the creation of specialized airspace for UAS operations. This may include designated airspace for certain clubs, or the establishment of special airways or corridors. Farris Technology and the University of Washington promoted the use of corridors or dedicated airways that will allow UAS flights above 500 feet.

Creation of UAS-specific airspace is beyond the scope of this rule because the NPRM did not propose to create any new airspace classifications or reclassify existing airspace.

One commenter suggested that the 500-foot restriction in Class G airspace should only be in place for rotorcraft UAS. However, after careful consideration, the FAA could not find a compelling reason to differentiate between fixed-wing and rotorcraft UAS for the purposes of altitude restrictions. For both aircraft, the threats posed to the NAS are similar. The UAS aircraft class itself does not mitigate those threats in any calculable manner. Therefore, a distinction based on UAS aircraft class is unwarranted.

ALPA recommended a change to the preamble discussion regarding the maximum altitude. As currently written, the preamble to the NPRM states that a small unmanned aircraft is prohibited from "travel higher than 500 feet AGL."[95] ALPA recommended replacing the word "travel" with "fly" or "operate."

For added clarity, the FAA will use the terms "fly" or "operate" in discussing the maximum altitude limitation in this preamble.

Several commenters, including Green Vegans, stated that the proposed 500-foot operating ceiling would make it impossible to comply with 14 CFR 91.119, which prescribes minimum altitudes for part 91 operations. Green Vegans questioned how a small UAS operator could remain in compliance with both part 107 and section 91.119.

Except where expressly stated to the contrary, the provisions of part 107 will replace the provisions of part 91 for small UAS operations subject to this rule. Consequently, a small UAS operating under part 107 will not be required to comply with § 91.119.

b. Mitigating Loss of Positive Control Risk

Now that we have defined the confined area of operation, we turn to the question of how loss-of-positive-control risk can be mitigated within that area of operation. There is significant diversity in both the types of small UAS that are available and the types of operations that those small UAS can be used in. Accordingly, remote pilots in command need significant flexibility to mitigate hazards posed by their individual small UAS operation, as a mitigation method that works well for one type of small UAS used in one type of operation may not work as well in another operation that uses another type of small UAS. For example, in a loss-of-positive-control situation, a rotorcraft that loses pilot inputs or power to its control systems would tend to descend straight down or at a slight angle while a fixed wing aircraft would glide for a greater distance before landing. Since the loss-of-positive-control risk posed by different types of small unmanned aircraft in various operations is different, the NPRM proposed to create a performance-based standard under which, subject to certain broadly applicable constraints, remote pilots in command would have the flexibility to create operational and aircraft-specific loss-of-control mitigation measures.

The broadly applicable constraints proposed by the NPRM consisted of: (1) A limit on the maximum speed of the small unmanned aircraft; (2) a prohibition on the simultaneous operation of more than one small unmanned aircraft; (3) a restriction on flight over people; and (4) a requirement for a preflight briefing for people who are directly participating in the small UAS operation. The NPRM also proposed to create a separate micro UAS category of UAS operations that would not be subject to a restriction on flight over people. Within these broadly applicable constraints, the NPRM proposed a two-part performance standard under which the remote pilot in command would conduct a preflight assessment of the operating area and then use the knowledge gained during that assessment to ensure that the small unmanned aircraft would not pose an undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason.

The following sections discuss the above components of the NPRM. The following sections also discuss the comments that the FAA received regarding automation within the confined area of operation and the use of equipage to mitigate the risk associated with loss of positive control.

i. Maximum Speed

The NPRM proposed a maximum air speed limit of 87 knots (100 mph) for small unmanned aircraft. The FAA explained that this speed limit is necessary because if there is a loss of positive control, an aircraft traveling at high speed poses a higher risk to persons, property, and other aircraft than an aircraft traveling at a lower speed. The NPRM also noted that a speed limit would have safety benefits outside of a loss-of-positive-control scenario because a small unmanned aircraft traveling at a lower speed is generally easier to control than a higher-speed aircraft. For the reasons discussed below, this rule will impose an 87-knot (100 mph) speed limit. This rule will, however, make the pertinent speed measurement the groundspeed rather than the airspeed of the small unmanned aircraft. The speed limit will also be waivable.

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[95] 80 FR at 9563.

Commenters including NAMIC, the Drone User Group Network, and the Remote Control Aerial Platform Association supported the proposed maximum airspeed. These commenters generally noted that the speed limitation of 100 mph seems reasonable for small UAS operating within visual line of sight.

Other commenters, including the Air Medical Operators Association, the Virginia Department of Aviation, and SWAPA, stated that FAA should lower the maximum permissible airspeed (*e.g.,* to 50 or 75 mph) because, the commenters argued, the proposed speed of 100 mph is too high and would pose undue risks. Several commenters, including Texas A&M University, HAI, the Virginia Department of Aviation and others, asserted that the NPRM failed to demonstrate the safety of the proposed speed limitation. These commenters argued that it would be extremely difficult to maintain positive control of a small unmanned aircraft flying at 100 mph.

Some commenters, including the American Association for Justice, the United States Ultralight Association, and the State of Nevada, asserted that the kinetic energy of a 55-pound object moving at 100 mph could cause significant damage to large aircraft. The US Hang Gliding & Paragliding Association, the Metropolitan Airports Commission, and Predesa stated that a lower maximum speed would provide additional time for UAS operators and pilots of manned aircraft to see and avoid each other. Several of these commenters, including the Metropolitan Airports Commission and Kansas State University UAS Program, stated that a 100 mph speed limit would make it extremely difficult (if not impossible) for an operator to maintain visual line of sight with the unmanned aircraft. NBAA, the Airports Council International—North America and the American Association of Airport Executives recommended that the FAA conduct further study and risk assessment regarding appropriate speed limitations for this type of UAS. The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative argued that FAA should establish a lower maximum speed that will create no greater harm than is caused by most birds (approximately 30 knots) until such time as further data demonstrates the safety of a higher speed limitation.

A speed limit of 87 knots (100 mph) must be viewed within the context of the overall regulatory framework of part 107. In other words, a small unmanned aircraft may reach a speed of 87 knots only if the remote pilot in command can satisfy all of the applicable provisions of part 107 while flying the small unmanned aircraft at 87 knots. For example, since this rule requires small UAS operations to be conducted within visual line of sight, a remote pilot in command may not allow the small unmanned aircraft to reach a speed where visual-line-of-sight cannot be maintained in accordance with § 107.31.

Additionally, as discussed in section III.E.3.b.vi of this preamble, the remote pilot in command must, prior to flight, assess the operating environment and consider risks to persons and property in the vicinity both on the surface and in the air. The remote pilot in command must also ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason. Thus, if the remote pilot in command plans to have an operation in which the small unmanned aircraft will travel at 87 knots, that remote pilot will, as part of the preflight assessment process, need to take precautions to ensure that the unmanned aircraft will not pose an undue hazard to other aircraft, people, or property on the ground. Those precautions will likely be greater than the precautions that a remote pilot in command will need to take for a small unmanned aircraft traveling at a lower speed. Accordingly, a maximum speed limit of 87 knots is appropriate because the remote pilot in command will have to implement mitigations commensurate with the risk posed by his or her specific small UAS operation.

Other commenters, including Textron Systems recommended no limitations regarding airspeed, arguing that as long as the operator can maintain visual line of sight and control of the UAS, there should be no performance limitations.

A speed limit is generally necessary for small unmanned aircraft because an aircraft traveling at high speed poses a higher risk to persons, property, and other aircraft than an aircraft traveling at lower speed. As discussed earlier, the other parameters of this rule (such as visual line of sight and the preflight assessment conducted by the remote pilot in command) mitigate this risk for small unmanned aircraft traveling at speeds up to 87 knots. However, those parameters do not address the risk posed by small unmanned aircraft traveling at speeds faster than 87 knots. Accordingly, this rule will retain the proposed 87-knot speed limit but will make that limit waivable. As part of the waiver process, the FAA will consider operation-specific mitigations to address additional risk posed by higher-speed small UAS operations.

The Kansas State University UAS Program and SWAPA questioned whether there would be any commercial applications of small UAS that would necessitate a 100 mph airspeed. Further, several commenters, including Modovolate Aviation, asserted that many small UAS, such as those employing multi-rotor technology, may not need to or may not be able to reach a speed of 100 mph.

The FAA agrees that there will likely be small unmanned aircraft incapable of reaching a speed of 87 knots. The FAA also agrees that there will likely be small UAS operations that are incapable of satisfying the other provisions of this rule, such as visual line of sight, at a speed of 87 knots. However, that is not a sufficient justification for reducing the maximum permissible speed for all small unmanned aircraft because there may be small UAS operations that can reach a speed of 87 knots and operate safely at that speed in compliance with all applicable provisions of part 107.

The New Hampshire Department of Transportation noted that the FAA did not propose any specific equipage requirements for small UAS that would be used to determine airspeed. Similarly, CAPA stated that the NPRM does not require or define how the operator will maintain operations below a specified airspeed other than visually, which the commenter said would be very difficult to do when operating in congested airspace and scanning for other conflicts.

Aerius recommended that the FAA amend the proposed regulatory text to make any speed limitations based on groundspeed because many UAS are not equipped with a system that would provide airspeed to the small UAS operator. Several individuals noted that multi-rotor helicopter UAS cannot sense airspeed, only groundspeed. Another individual suggested that the regulatory text be amended to reference GPS-generated airspeed because all UAS do not have the equipment to provide airspeed to the operator.

As noted by the commenters, the provisions of this rule will not require small UAS to be equipped with a system that would provide calibrated airspeed to the remote pilot in command. The FAA also notes that the groundspeed of the small unmanned aircraft is what is pertinent to the safety of a small UAS operation because that is the information that specifies how quickly the aircraft is moving relative to the ground in proximity to where the remote pilot is located. Because changing the standard to groundspeed rather than calibrated airspeed would not have a detrimental effect on safety and because many unmanned aircraft may not have the equipage necessary to measure calibrated airspeed, the FAA agrees with the commenters and has changed the maximum airspeed standard to be a function of groundspeed. A small unmanned aircraft's groundspeed could be determined by measures such as GPS-based speed, visual estimation, a radar gun, or timed travel across a fixed distance. This rule will retain the maximum speed limit of 87 knots (100 mph), but that limit will be a measure of groundspeed rather than airspeed.

A few individuals (who self-identified as recreational operators of model aircraft) said the proposed maximum speed would preclude them from holding certain types of model aircraft competitions. In response, the FAA emphasizes that, as discussed in section III.C.4 of this preamble, part 107 will not apply to model aircraft operations that meet the criteria of section 336 of Public Law 112–95.

ii. Operating Multiple Unmanned Aircraft

The NPRM proposed that an operator or visual observer would be limited to operating no more than one small UAS at the same time. The NPRM explained that performing the duties required of a crewmember in real time is a concentration-intensive activity and as such, it is necessary to place a limitation on the number of UAS that a person can operate simultaneously. For the reasons discussed below, this rule will retain the proposed prohibition on the simultaneous operation of multiple small unmanned aircraft. This prohibition will be waivable if a person establishes that his or her simultaneous operation of more than one small unmanned aircraft can safely be conducted under the terms of a certificate of waiver.

NAAA, the California Agricultural Aircraft Association, NAMIC, Colorado Agricultural Aviation Association, and Schertz Aerial Services supported limiting operators or visual observers to operating only one small UAS at a time. The International Brotherhood of Teamsters urged the FAA to maintain all operational limits and safeguards presented in the NPRM, including the limit of one UAS per operator, until there is technological certainty that no workers, or the general public, would be at risk from automated package delivery.

Other commenters disagreed with the proposed limitation on the number of small UAS that a person can operate simultaneously. Several commenters asserted that technology currently exists to allow for the safe operation of multiple small UAS by a single operator. The Mercatus Center at George Mason University said existing and developing technologies "can more than compensate to the diminished concentration that operators might apply to each individual aircraft." AirShip Technologies stated that it currently incorporates technology that will allow clusters of UAS with similar missions to be pre-programmed and controlled by one operator. Boeing and Aviation Management similarly said that current technology allows a group or swarm of multiple vehicles to operate safely and efficiently in highly automated modes.

The commenters also claimed that new operator consoles have been shown to be able to safely control multiple small UAS systems. The NJIT Working Group pointed to the Navy Low-Cost UAV Swarming Technology (LOCUST), which it said could be used for non-military purposes, such as first responder and search and rescue operations. Vision Services Group said multiple small UAS operations should be permitted if both the operator and visual observer possess a Permit to Operate and a valid Third Class Medical Certificate.

As discussed in the visual-line-of-sight section of this preamble, the remote pilot in command, the person manipulating the flight controls of the small UAS, and the visual observer (if one is used) are required to maintain visual awareness of the small unmanned aircraft and the surrounding airspace in order to minimize the risk of a mid-air collision with a manned aircraft. This activity requires active attention and operating more than one unmanned aircraft at the same time would split the concentration of the small UAS crewmembers. By decreasing the amount of attention that the remote pilot in command, person manipulating the flight controls, and visual observer can dedicate to each small unmanned aircraft, the operation of multiple small unmanned aircraft at the same time may introduce additional risk into the NAS. This risk would further be compounded if larger numbers of aircraft are operated at the same time because each aircraft would receive an even smaller fraction of each person's attention.

The FAA recognizes that technology may allow a remote pilot in command to operate multiple small unmanned aircraft as one system. While such a system may, in some circumstances, help address the split-attention problem discussed above, it would introduce significantly more risk into the operation because of the remote pilot's potentially reduced ability to resolve multiple aircraft or system failures to a safe outcome. For example, if one small unmanned aircraft in a multi-aircraft system loses its link to the control station, it may cause the whole system to break down, resulting in loss of positive control of multiple small unmanned aircraft and significantly increasing the risk to the NAS. The FAA notes that, at this time, none of the technologies cited by the commenters have established a necessary level of reliability through a nationally recognized formal testing process such as through ASTM International, SAE International, or civil aviation airworthiness certification. Accordingly, this rule will prohibit a person from manipulating the flight controls of more than one unmanned aircraft or acting as a remote pilot in command or visual observer in the operation of more than one unmanned aircraft at the same time. However, as discussed below, this prohibition will be subject to waiver.

Commenters including Aviation Management, Boeing, the Small UAV Coalition, and AIA said that the FAA should revise the rule to create the framework for the agency to be able to administratively approve multi-UAS operations. Several of those commenters, as well as Google, Amazon, and AUVSI, among others, supported allowing the operation of multiple small UAS per operator in certain cases using a risk-based approach. Amazon, for example, said the proposed provision should be revised to specifically permit the operation of multiple small UAS by a single operator "when demonstrated that this can be done safely." The Small UAV Coalition said approval for the operation of multiple small UAS by a single operator would be based on a demonstration of operator ability and technological capabilities of the UAS.

DJI said it may be possible for an operator to operate more than one small UAS at a time if there are sufficient visual observers or detect-and-avoid technology. An individual said the rule should allow for the use of multiple small UAS by a single operator if all of the UAS are within the visual line of sight of either the operator or visual observer or if there is some other means of compliance for see-and-avoid for all small UAS involved in the operation.

Other commenters said the final rule needs to have the flexibility to accommodate emerging technology in this area. The Utah Governor's Office of Economic Development stated that "[t]here must be a road map to, and provisions for, multiple UAS per operator to allow this technology to be tested and eventually implemented." The University of Illinois at Urbana-Champaign said there should be an exception to the proposed restriction for research into developing technology to allow multiple drones to successfully navigate together. MPAA asserted that "as control systems improve it may become possible to operate more than one system at a time." MPAA urged the FAA to provide a mechanism in the rules to allow additional flexibility for filming in controlled environments as such technology advances. The National Association of Broadcasters, National Cable & Telecommunications Association, and Radio Television Digital News Association said that given the speed at which technology is developing, the FAA should be open to considering automated systems that contemplate one person controlling multiple small UAS that demonstrate an equivalent level of safety to the requirements of the final rule.

The FAA acknowledges the points raised by the commenters that the risks discussed above may, at some point in the future, be mitigated through technology. However, as of this writing, the FAA does not have data on which to base a safety finding that the available technology for multiple simultaneous small unmanned aircraft operations by one person has matured to the extent necessary to allow these types of operations in a rule of general applicability. The FAA also acknowledges the benefits of research and development associated with the simultaneous operation of multiple unmanned aircraft and agrees that additional flexibility is called for in this rule so that the agency can administratively allow these types of operations based on operation-specific mitigations. Accordingly, the FAA has made the prohibition on the simultaneous operation of multiple small unmanned aircraft waivable on a case-by-case basis. To obtain a waiver, a person will have to demonstrate that his or her simultaneous operation of more than one small unmanned aircraft can safely be conducted under the terms of a certificate of waiver. The FAA recognizes the potential of one person being able to operate multiple small unmanned aircraft and will evaluate operations conducted under FAA-issued waivers to help inform future agency actions to enable the simultaneous operation of multiple small UAS.

Amazon asserted that the proposed restriction is based on the flawed premises that small UAS must be operated under constant manual control and that FAA-recognized mitigation measures like flight termination systems are not already available today. Aerial Services and MAPPS stated that the FAA should allow the operation of swarms of UAS if the flight management system is capable of supporting it and each aircraft has rigid automated procedures in case of loss of signal.

As discussed previously, swarms of multiple small unmanned aircraft that are linked up to a single system introduce additional risk into the NAS because a single unmanned aircraft losing its link to the control system may destabilize the system and result in loss of positive control of multiple aircraft. Additionally, the FAA does not currently have data on which to base a finding that the pertinent technology has matured to the extent necessary to allow the safe operation of multiple small unmanned aircraft in a rule of general applicability. As such, the FAA will consider the use of this technology on a case-by-case basis via the waiver process.

AirShip Technologies and the NJIT Working Group cited military and non-military uses for clusters, swarms, and multiple UAS. These include combat, first responder missions, mapping, and search and rescue operations. Skycatch, Clayco, AECOM, DPR Construction, and AUVSI noted that the use of multiple UAS in a single operation allows for more efficient completion of complex tasks to include work over job sites without increasing the amount of time in flight or recharging of batteries.

The FAA agrees with the commenters that the operation of multiple unmanned aircraft may provide a valuable and broad spectrum of services. However, the technology necessary to mitigate risk associated with this type of operation is still in its infancy and has not yet been proven to meet a level of reliability sufficient to allow that technology to be relied on for risk mitigation in a rule of general applicability. As discussed previously, the waiver process will continue to be available for small UAS operations that fall outside the operational parameters of part 107.

The International Center for Law and Economics and Tech Freedom said the proposed restriction "fails to reflect the 'best reasonably obtainable scientific, technical, economic, and other information,' " as required by Executive Order 12866. The commenters further stated that the FAA has a constitutional obligation to explore the adequacy of simultaneous operation technology. Otherwise, the commenters continued, the rule will greatly increase the cost of operating UAS, thus limiting their availability for both commercial and non-commercial uses that are protected by the First Amendment.

The FAA received over 4,500 comments on this rulemaking and none of the commenters (including the International Center for Law and Economics and Tech Freedom) submitted any data establishing the safety or maturity of simultaneous-operation technology. Based on the number and high quality of the comments submitted, the FAA believes that this lack of data was not an oversight but, rather, evidence of the fact that existing data about this technology is very limited at this time. The FAA will continue exploring the feasibility of this technology in future agency actions that will be informed, in part, by small UAS operations that will take place under a part 107 waiver allowing the operation of multiple small unmanned aircraft at the same time.

iii. Micro UAS

The NPRM raised the possibility of creating a separate micro UAS classification for UAS weighing no more than 4.4 pounds (2 kilograms). The NPRM went on to list the following restrictions that the FAA was considering for such a micro UAS classification:

- Require that the micro UAS be made out of frangible materials that break, distort, or yield on impact.
- Require that the unmanned aircraft weigh no more than 4.4 pounds.
- Impose a maximum airspeed of 30 knots.
- Impose a maximum altitude of 400 feet AGL.
- Restrict flight distance to 1,500 feet from, and within the visual line of sight of, the operator.
- Ban the use of first person view during operations.
- Require the operator to maintain manual control of the flight path of the micro UAS and, therefore, ban the use of automation to control the flight path.
- Limit operations to Class G airspace.
- Require the micro UAS to maintain a distance of at least 5 nautical miles from any airport.

With these additional operating restrictions, the NPRM proposed to: (1) Allow micro UAS to fly over people not involved with the operation; and (2) create a separate airman certificate with a micro UAS rating.

Many commenters addressing the issue supported the creation of a separate micro UAS classification, noting that the reduced regulatory requirements associated with the classification are consistent with the lower hazards posed by micro UAS. Commenters in research/academia and the agricultural, news/media, insurance, and construction industries, among others, also noted the value of being able to operate micro UAS under the lesser restrictions contemplated in the NPRM.

However, a number of commenters, including ALPA, NAAA, NetMoby, Aerius, Planehook, Green Vegans, and NextGen Air Transportation Program at NC State University, opposed the creation of a separate micro UAS classification. Reasons for their opposition included concerns about: (1) The safety of flying over people not involved in operations; (2) an airman certificate issued on the basis of self-certification; and (3) the lack of data available on the safety of micro UAS operations. UAS America Fund and the Property Drone Consortium recommended that micro UAS operators should be required to obtain liability insurance for their operation.

Other commenters, including the Small UAV Coalition, National Association of Broadcasters, Skycatch, DJI, Predesa, the Nez Perce Tribe, and the New Hampshire Department of Transportation opposed the operational limitations that the NPRM proposed for micro UAS. These commenters argued that many of the proposed limitations such as the frangibility requirement, the prohibition on use of FPV devices, the prohibition on autonomous operations, and the prohibition on operating within five miles of an airport, would be unduly restrictive and would significantly impair micro UAS operations.

Still other commenters, including the Association of American Universities, the Electronic Frontier Foundation, Associated General Contractors, Southern Company, and the Oklahoma Governor's Unmanned Aerial Systems Council argued that micro UAS should be exempted from some of the other operational restrictions of part 107 (not just flight over people). Commenters suggested that micro UAS be exempted from the visual-line-of-sight restriction, the limitation to daylight-only operations, the prohibition on simultaneous operation of multiple aircraft, and the minimum visibility requirements.

The FAA agrees with the commenters who pointed out that many of the micro UAS limitations proposed in the NPRM, such as the requirement to remain more than five miles away from an airport and the prohibition on autonomous operations would, if finalized in this rule, significantly impair micro UAS operations. At the same time, the FAA acknowledges the concerns raised by ALPA, NAAA, and other commenters who pointed out that, even though micro UAS are smaller than other small UAS, they can still pose a safety risk. This concern is particularly troubling given the limited safety data currently available with regard to micro UAS operations and the fact that almost all other countries that currently regulate UAS generally do not allow small unmanned aircraft to fly over people or congested areas.[96]

Thus, after consideration of the comments that the proposed micro UAS restrictions would limit the utility of such operations and safety concerns that remain even with the operating limitations proposed in the NPRM, the FAA has determined that a different framework to regulate micro UAS is called for. Because the public has not yet been given an opportunity to comment on an alternate framework for micro UAS operations, the FAA has determined that a new comment period should be provided for the micro UAS component of this rule. Accordingly, the FAA chartered a new ARC to provide the FAA with recommendations regarding Micro UAS. On April 2, 2016, the FAA received the Micro UAS ARC's recommendations, and is moving to expeditiously issue an NPRM. In the meantime, the FAA will finalize the remainder of this rule to immediately integrate all other small UAS operations into the NAS.

While the micro UAS NPRM rulemaking is pending, micro UAS will remain subject to the same provisions as all other small UAS. However, the FAA notes that many of the operational restrictions of part 107 are subject to waiver. A very low-weight unmanned aircraft may be one mitigation that could, in conjunction with other mitigations, be used to help support a safety finding as part of a waiver-application evaluation.

iv. Flight Over People

The NPRM proposed to prohibit the operation of small unmanned aircraft over a person unless that person is either directly participating in the small UAS operation or is located under a covered structure that would protect the person from a falling small unmanned aircraft.[97] This rule will finalize this provision with two changes. First, this rule will allow a small unmanned aircraft to be operated over a person who is inside a stationary covered vehicle. Second, this rule will make the restriction on operating a small unmanned aircraft over people waivable.

Many commenters, including NAAA, International Brotherhood of Teamsters, and Professional Photographers of America, supported the flight-over-people provision as proposed in the NPRM. Other commenters objected to the proposed requirement.

DronSystems stated that the proposed ban on operations over non-involved persons would impact e-commerce and "a number of other sectors," and would be difficult to enforce. The University of Washington said that banning operations over non-operators is over-burdensome. WAG said the proposed prohibition "could have a significant chilling effect on both the commercial application of sUAS technology as well as the future development of sUAS technology," and is inconsistent with the "model aircraft" protections afforded by part 101 and section 336 of Public Law 112–95. Similarly, Foxtrot Consulting suggested that adequate training and a performance evaluation is a better mitigation measure because it ensures that remote pilots can operate their small UAS safely, regardless of what is below.

The Small UAV Coalition, Aeromarine, and an individual commenter stated that the proposed prohibition is unduly restrictive because there is no prohibition on manned aircraft flying over people. The Coalition also asserted that, given the consequent reduction in risk associated with the visual-line-of-sight and see-and-avoid requirements, a small UAS may safely be operated over persons.

The International Center for Law and Economics and TechFreedom claimed that by prohibiting UAS operation over people who are not directly involved in the operation, the FAA is "essentially limiting commercial UAS operations to unpopulated or extremely sparsely populated areas," and thus is "improperly ignor[ing] the important incentives for innovation suggested by Executive Order 12866 without apparent corresponding benefit."

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[96] Some countries, such as the United Kingdom, allow approval for flight in congested areas on a case-by-case basis. *See* GAO, *Unmanned Aerial Systems: FAA Continues Progress toward Integration into the National Airspace* at 32 (July 2015).

[97] Title 14 CFR 1.1 defines "person" as "an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them." Because the term "person" is defined in 14 CFR 1.1, part 107 uses the term "human being" in the regulatory text to capture only an individual human being. For readability, the preamble uses the terms "person" and "human being" interchangeably.

The Consumers Energy Company (CEC) stated that the likelihood of injury from contact with a small UAS is low given the restrictions on the size of small UAS, as well as the fact that they use small rotors and carry small fuel loads. With respect to the maintenance of power lines, poles, and related facilities, in particular, CEC pointed out that most operations occur in remote or rural locations with low population densities, where the risk of contact between a small UAS and a non-involved person is minimal. CEC said the FAA needs to consider "whether the risk perceived from small UAS usage really justifies a restriction that could have a substantial impact on the ability to use sUAS on a commercial scale."

Manned aircraft are generally permitted to fly over people because manned aircraft are formally evaluated for airworthiness through the airworthiness certification process. This process ensures that the manned aircraft has a level of reliability that would allow it to, among other things, safely fly over a person.

This rule does not require airworthiness certification. Because small unmanned aircraft have not been tested for reliability through the airworthiness certification process, they will likely have a higher failure rate than certificated aircraft. A small unmanned aircraft that fails may fall on a person standing under it at the time of failure, which is why this rule restricts small unmanned aircraft flight over people.

With regard to the risk caused by small UAS operations, the FAA agrees that, to date, the number of actual fatalities caused by small UAS operation has been low. However, that may be a function of the fact that, until recently, commercial civil small UAS operations have been prohibited in the United States. As discussed in the Regulatory Impact Assessment, the FAA expects the use of small UAS to increase after issuance of this rule, and thus, the agency has to ensure that part 107 implements appropriate mitigation to address potential risk caused by small unmanned aircraft flight over people.

The FAA agrees with WAG and Foxtrot Consulting that the knowledge that remote pilots in command will acquire during the certification process will help mitigate against small UAS accidents caused by human error. However, the safety concern underlying the flight-over-people restriction is not human error, it is mechanical failure. While a remote pilot in command may be able to detect some signs of potential mechanical failure during the preflight check, the preflight check does not, by itself, assure a level of mechanical reliability established by the formal airworthiness and maintenance processes that apply to other aircraft in the NAS. The appropriate mitigation to address this discrepancy, especially for heavier small unmanned aircraft, is an operational restriction on flying over people who could be hurt in the event of a mechanical failure.

The FAA disagrees with WAG's assertion that model aircraft are subject to a lower flight-over-people standard than part 107 operations. In order to operate under section 336 of Public Law 112–95, a model aircraft must, among other things, be "operated in accordance with a community based set of safety guidelines and within the programming of a nationwide community-based organization."[98] Today, the largest nationwide community-based organization that operates model aircraft is the Academy of Model Aeronautics (AMA). AMA's safety code specifically prohibits "flying directly over unprotected people, vessels, vehicles or structures."[99]

Several commenters, including the American Council of Engineering Companies, AUVSI, and Consumer Electronics Association, urged the FAA to implement a risk-based approach to allow operations over people.

AUVSI asserted that "by allowing sUAS operations over human beings following a risk-based approach, the FAA would foster industry innovation to develop the proper equipment and software necessary to meet safety standards regarding such operations." CEA provided an example of such a risk-based restriction used by another country that it said "would permit operations in less populated environments and continue to allow industry to gain experience and innovate." Specifically, CEA noted that the Swiss have successfully used a permitting system for UAS operations over "gatherings of people," defined as "several dozen people standing in close proximity to one another" or within a radius of 100 meters of such gatherings. Drawing on that example, CEA recommended the FAA "tailor the rules to prohibit operations over mass gatherings, such as concerts and sporting events." Although CEA commended the FAA for rejecting as "unduly burdensome" a prohibition against the operation of small UAS over any person, it nevertheless asserted its belief "that the proposal is just as burdensome and that small UAS incorporate sufficient safety measures that make the prohibition unnecessary under the new rules."

Boeing similarly recommended that the FAA reconsider proposed § 107.39 and "develop criteria using a risk-based approach to this issue, based upon population density and overflight, to take into account agriculture as well as law enforcement uses." The Professional Helicopter Pilots Association suggested allowing small UAS to be operated over persons or property if they do so in a safe manner.

DJI pointed out that "the proposed performance standards already impose an obligation on the operator to familiarize himself with the operating environment and take steps to assure the operation does not present an 'undue hazard'." Depending on the nature of the operation, DJI continued, "the risk associated with an inadvertent loss of positive control may require that there be no third parties exposed to any risk," or "the risk may be so minimal as to merit notification but not evacuation or taking cover," or "the required safety measure may fall within this range of options." As such, DJI suggested that "the best way to address the risk to individuals not directly involved in the operation is through the proposed performance standard."

Trimble Navigation proposed the FAA rely on a performance-based regime for operations over persons. Noting that the onus and obligation should be primarily on the small UAS operator to assess the overall safety environment before operating over persons, the company said the FAA "should avoid trying to specify precise design-based criteria in favor of a general standard of care that requires the operator to take into account the full range of operational safety protections and procedures at the site in question."

A commenter suggested the final regulations should discern between UAS weighing 5 pounds or less (which could be operated over "populated" areas at a maximum speed of 40 mph), UAS weighing between 5 and 25 pounds (which could be operated over "sparsely populated" areas at a maximum speed of 70 mph), and UAS weighing between 25 and 55 pounds (which could be operated according to the limitations imposed in the NPRM). The commenter further suggested that COAs be available for UAS between 25 and 55 pounds to be operated in populated and sparsely populated areas.

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[98] Public Law 112–95, sec. 336(a)(2).

[99] Academy of Model Aeronautics National Model Aircraft Safety Code, § B(1).

The FAA agrees that for certain types of small unmanned aircraft, a more performance-based set of operational mitigations may be appropriate because the lighter weight or other characteristics of those aircraft may result in less impact force if they should collide with a person. That is why, as discussed in the previous section, the FAA will be issuing an NPRM inviting public comment on a framework under which micro UAS will be allowed to operate over people. However, other small unmanned aircraft that do not meet the characteristics of a micro UAS may result in more impact force if they should collide with a person and that greater force may seriously injure or kill the person.

The risk associated with flight over people is due to mechanical reliability issues that a remote pilot in command may have a limited opportunity to evaluate without airworthiness certification or a more extensive maintenance process. At this time, the FAA has no data establishing how that risk could be mitigated through operational constraints (whether performance-based or otherwise), other than a prohibition on flight over people. Accordingly, this rule will retain the general prohibition on flight over people. However, as discussed below, this prohibition will be waivable to allow the FAA to consider case-specific mitigations. The FAA will use data and operating experience gained as a result of the waiver process to help inform future UAS rulemakings.

A number of commenters said the proposed restriction should be narrowed to apply only to certain crowded or heavily populated areas. The American Petroleum Institute urged the FAA not to apply the prohibition in cases of "intentional acts to disrupt lawful UAS operations" (*e.g.,* anti-oil and gas activists placing themselves in generally accessible areas of operation to frustrate or halt routine activities). Event 38 Unmanned Systems proposed that "certain events and other areas with high people concentration locations be designated as no-fly zones," instead of a total ban on operations over non-participants. The company suggested that local and State entities could be involved in this part of the rulemaking.

Matternet similarly recommended that the only overhead operations that should be restricted are operations "over an open air assembly of persons if such operation endangers the life or property of another." The company compared the proposed regulation to regulations for ultralight vehicles (ULV)—which weigh up to 250 pounds, plus the weight of the person, and are permitted to be operated over persons—and suggested that a device weighing less than one-sixth the weight of a ULV with a passenger, and operated at an altitude of only 500 feet or less (compared to thousands of feet for the ULV), poses far less risk to persons on the ground. Several individuals also recommended that the final rule prohibit any operation in congested areas or over open-air assemblies of people.

As an initial matter, the FAA notes that there is a significant difference between the terms "congested area" and "open-air assembly of people." While the term "open-air assembly of people" applies only to a large group of people, the term "congested area" could apply to an area that has no people in it. For example, a town's commercial/business district can be considered a congested area, even in the middle of the night when there are no people in the area.[100]

As pointed out by the commenters, a number of existing operations that take place in the NAS, such as the operation of ULV, are prohibited from taking place over congested areas.[101] The FAA considered imposing a similar restriction on small UAS operations conducted under this rule. However, the FAA ultimately rejected this approach as needlessly restrictive because it would prohibit small UAS operations over certain parts of a town even when there are no people in the area of operation who could be hurt by a small unmanned aircraft.

With regard to operations that are not conducted over an open-air assembly of people, the FAA agrees that this may be a consideration for some small unmanned aircraft that pose a lower injury risk if they collide with a person, consistent with the micro UAS ARC's recommendations. Accordingly, the FAA may consider this approach as part of the micro UAS rulemaking. However, other small unmanned aircraft pose a higher injury risk and in the event of a mechanical failure, those aircraft could seriously injure or kill a person in their path, even if that person is not part of a larger group. Accordingly, this rule will not allow flight over people even when they are not part of an open-air assembly. We will continue to evaluate this issue and address it in rulemaking in response to the Micro UAS ARC recommendations, as noted earlier.

The FAA declines to add an exception for intentional acts to disrupt lawful small UAS operations. A person who is standing under an uncertificated small unmanned aircraft is subject to the same amount of risk regardless of his or her subjective motivation for standing under the aircraft. The FAA notes, however, that State and local laws, such as trespassing, may provide a remedy for companies whose small UAS operations are deliberately interfered with by people entering the area of operation without permission.

Finally, with regard to State and local entity involvement in this rulemaking, the FAA notes that the comment period for the NPRM was open to everyone, including State and local entities. The FAA received a number of comments from State and local entities, and it considered those comments when formulating this final rule.

Several commenters, including the Small UAV Coalition, Google, and Statoil, suggested that the prohibition on flight over people should be subject to waiver or some other type of deviation authority. The Small UAV Coalition urged the FAA to revise proposed § 107.39 to allow the Administrator or his delegate to authorize small UAS operations over non-participating persons through exemption, deviation authority (certificate of waiver or authorization), or certification, "upon a showing that any risk to persons on the ground is sufficiently mitigated."

Google pointed out that an outright ban on operations over people not directly participating in the operation of the UAS or not located under a covered structure would limit beneficial uses for small UAS which involve operations above nonparticipants. Google proposed that operators be able to "present a safety case" to the FAA for operations over non-participants.

The National Ski Area Association (NSAA) said the final rule should recognize and accommodate technological innovations, which could be required for use of UAS at ski areas when operating near open-air assemblies of persons. Such technologies include geo-fencing, return-to-home capabilities, pre-programmed waypoint software, land-immediately function, GPS, signal processing, and increasingly reliable navigation systems.

CEA suggested that the FAA allow small UAS to be eligible to obtain airworthiness certifications, and that UAS with such certifications not be subject to the prohibition on operations over people. CEA asserted that such an approach "will create a vibrant market for UAS and encourage manufacturers to seek airworthiness certification."

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[100] *See* Letter to James E. Gardner from Rebecca MacPherson, Assistant Chief Counsel for Regulations (June 18, 2012).

[101] *See, e.g.,* 14 CFR 103.15.

Airware pointed out that standards have been developed by ASTM subgroup F38 to ensure higher levels of safety for operations that pose a higher risk like flight over populated areas. In addition to those existing standards, Airware asserted that the combination of the use of fly-away protections like geo-fencing and contingency management, applying design and testing to industry standards, the use of reliable flight control systems, and the use of parachutes to mitigate against the risk of all out failure "provides an equivalent level of safety for flight in populated areas." Airware further asserted that this goes well beyond the requirements imposed in the countries that currently allow for operations over populated areas like France, the Czech Republic, Austria, Denmark, Italy, and Sweden (among others), which "are currently being conducted with extremely high levels of safety."

ASTM pointed out that there are multiple approved industry consensus standards under development to support operations over people, in case the FAA decides to require compliance with industry consensus standards for this requirement in the final rule. ASTM also noted that precedent exists for the utilization of industry consensus standards by Federal agencies in the United States. The commenter went on to point out that the National Technology Transfer and Advancement Act (NTTAA) mandates that all Federal agencies use technical standards developed and adopted by voluntary consensus standards bodies, as opposed to using government-unique standards. In addition, ASTM asserted that, consistent with Section 12(d) of the NTTAA, OMB Circular A–119 directs agencies to use voluntary consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. ASTM further noted that OMB Circular A–119 also provides guidance for agencies participating in voluntary consensus standards bodies and describes procedures for satisfying the reporting requirements of the Act.

The FAA agrees that technology or additional mitigation, such as airworthiness certification, may allow small unmanned aircraft to safely fly over people in certain circumstances. Accordingly, the flight-over-people restriction in this rule will be waivable. In order to obtain a waiver, an applicant will have to demonstrate that he or she has implemented mitigations such that small unmanned aircraft flight over people can safely be conducted under the terms of a certificate of waiver.

The FAA also agrees with CEA that while this rule does not require airworthiness certification, this rule also does not prohibit a small UAS from voluntarily obtaining this certification. The FAA generally agrees that having a small UAS meet an appropriate airworthiness standard could increase safety to the point of permitting a small unmanned aircraft to operate over persons who are not directly involved in the flight operation (*i.e.*, non-participants) and who are not under a covered structure. The FAA may consider airworthiness certification of the small UAS as mitigation to support an application for waiver that would allow a small unmanned aircraft to operate over unprotected non-participants.

With regard to the use of industry consensus-standards, as noted by ASTM, consensus standards for operations such as flight over people are currently in development. As of this writing, those standards have not yet been published. The FAA notes, however, that the level of safety that must be demonstrated in order to obtain a waiver may be demonstrated in a number of different ways. Once consensus standards are published, the FAA may consider whether compliance with the published consensus standards would be one way to demonstrate that the proposed operation can be conducted safely under the terms of a certificate of waiver. The FAA will also consider UAS-specific consensus standards, once they are published, in future UAS rulemakings.

Several commenters said the proposed prohibition should not apply when additional risk mitigating measures are employed. Southern Company said the FAA should allow operations over any person who is located on the property, easement, or right of way of the person or entity for whom the small UAS is operated, and any person who is participating in the activity for which the small UAS is being operated. The commenter said such mitigating restrictions could include a lower operating ceiling, lateral-distance limits, a lower speed restriction, and a prohibition on operations over large gatherings of people. Qualcomm similarly proposed that FAA permit operations over uninvolved persons where risks are mitigated by the use of "proven means of avoiding harm to individuals via technologies that allow the device to land safely under even extreme circumstances." The Rocky Mountain Farmers Union urged the FAA to allow operations over non-participants "under circumstances when the UAS operator can maintain safe operation of the UAS and either depart the area or safely land the UAS without risk to unrelated persons on the ground." The Newspaper Association of America asserted that the FAA should not prohibit news organizations from overhead flight, "provided that adequate precautionary measures are taken to ensure that [UAS] are operated safely at all times."

The Mercatus Center at George Mason University said that the FAA did not consider the benefits of allowing UAS operations over persons not involved in the operation, and that the FAA overstates the risks of operation in populated areas. The University asserted that, "[u]pon loss of positive control, unmanned aircraft can be programmed to safely return to a base, or to simply hover in place." Thus, the University continued, the risk to bystanders can be mitigated without a ban on operation over uninvolved persons.

NAMIC recommended that the FAA allow small UAS operations over people not directly involved in the operation, as long as those operations follow enhanced safety protocols, including, for example: (1) That the small unmanned aircraft not loiter over a person or persons for an extended period of time, but transition over them as needed to reach a location where operating is permitted to complete the flight; and (2) that an operator must operate the UAS at a sufficient altitude so that if a power unit fails, an emergency landing can be accomplished without undue hazard to persons or property on the ground. Exelon Corporation said that the final rule should include reasonable accommodations to allow for brief, low-risk exceptions to the ban on flights over non-participating persons (*e.g.*, flying across a road during a survey of damage to power distribution lines in suburban areas), and that "proper safety precautions as well as signage, education, and protocol can be put in place to mitigate any safety concerns."

The Property Drone Consortium said that any UAS with "special safety features" should be exempt from the ban on flight over non-participants. Furthermore, the Consortium suggested the FAA mitigate any safety concerns by requiring appropriate insurance coverage or creating a suggested list of "best practices" for use in the insurance industry. Similarly, the University of Illinois at Urbana-Champaign said the proposed prohibition "is onerous and overprotective," and suggested instead that insurance and equipment requirements could be employed "to promote responsible use of the UAS."

As discussed earlier, the restriction on flight over people in this rule will be waivable. This will allow the FAA to consider, on a case-by-case basis, any additional mitigations that are incorporated into a small UAS operation. The FAA will grant a waiver request allowing small unmanned aircraft flight over people if the applicant establishes that his or her operation can safely be conducted under the terms of a certificate of waiver. In response to comments suggesting an insurance requirement in place of the flight-over-people restriction, the FAA notes that, as discussed in section III.K.1 of this preamble, the FAA lacks jurisdiction to mandate the purchase of liability insurance.

An individual commenter suggested that operations in congested areas be permitted with additional licensure, which the commenter said "will assist the operator in recognizing potential hazards and risks as well as the ability to assess those risks to ensure that these hazards to the public be minimized." Another individual commenter recommended an additional rating for operators to allow them to fly "in cities and other crowded areas." The commenter said the operators could be required to go through a more comprehensive certification process, and the UAS could be required to have annual or semiannual maintenance checks and be equipped with an automatically deployable parachute system.

As discussed earlier, the FAA considered and rejected additional limitations on operations over congested areas because that approach would needlessly limit small UAS operation over congested areas during times when those areas are devoid of people. The FAA also does not agree that additional remote pilot certification should be required to operate over an empty area of operation, even if that area of operation happens to be located in a congested area.

The Stadium Managers Association suggested modifying proposed § 107.39 to mirror the current section 333 exemption language which, in addition to prohibiting flights over people, includes a prohibition against flight over vehicles, vessels, and structures. Vision Services Group similarly recommended prohibiting flight over people in a covered structure.

On the other hand, Edison Electric Institute, NRECA, the American Public Power Association, and Continental Mapping suggested that the exception allowing flight over people located under a covered structure that can provide reasonable protection from a falling small unmanned aircraft should be clarified to indicate that persons under cover in a vehicle "may qualify as being in a structure providing reasonable protection."

This rule will allow flight over people located under a covered structure capable of protecting a person from a falling small unmanned aircraft because such a structure mitigates the risk associated with a small unmanned aircraft flying over people. The FAA also agrees with Edison Electric Institute, NRECA, the American Public Power Association, and Continental Mapping that a small unmanned aircraft should be allowed to fly over a person who is inside a stationary covered vehicle that can provide reasonable protection from a falling small unmanned aircraft. The FAA has modified this rule accordingly. This rule will not, however, allow operation of a small unmanned aircraft over a moving vehicle because the moving vehicle operating environment is dynamic (not directly controlled by the remote pilot in command) and the potential impact forces when an unmanned aircraft impacts a moving road vehicle pose unacceptable risks due to head-on closure speeds. Additionally, impact with a small unmanned aircraft may distract the driver of a moving vehicle and result in an accident.

Several commenters sought clarification on the NPRM's use of the phrases "directly participating in the operation" (as used in proposed § 107.39(a)) and "directly involved in the operation" (as used in the preamble). Associated Equipment Distributors noted that the preamble to the NPRM indicates that direct participation is limited to the operator and the visual observer, but the proposed regulatory language "does not afford clarity on this point." SkySpecs proposed allowing anyone who has permission to be on a construction site and is covered by liability insurance to be covered by the definition.

Edison Electric Institute, NRECA, and the American Public Power Association said the definition of "directly participating" "should be expanded to include personnel engaged in related activities, such as workers at a power plant a small UAS is being used to monitor or an electric utility crew whose work the small UAS is being used to assist." The organizations further proposed that such individuals would qualify as "directly participating in an operation" if they had received the pre-flight briefing described in proposed § 107.49.

Some commenters, including NBAA, the American Insurance Association, FLIR Systems, the North Carolina Association of Broadcasters, and Skycatch, felt that FAA should permit small UAS operations over individuals not involved in the UAS operations when those individuals consent to, or are made aware of, the operations. Several State farm bureaus and NBAA urged the FAA to allow small UAS operations over people not directly involved in an operation so long as the operator notifies those people of the operation before it starts. The American Farm Bureau Federation and a number of state farm bureau federations said the definition should be expanded to include individuals "who have been made aware of the presence and approximate flight path of the sUAS in their vicinity." The farm bureau federations claimed that the risk of a small UAS endangering a consenting individual working in a field who is not directly involved in, but is aware of, a small UAS operation "is simply too remote to justify a blanket prohibition."[102] AED proposed including consenting individuals, such as employees and contractors at a construction site, in the definition of "directly participating in the operation." The International Association of Amusement Parks and Attractions also suggested that the definition of "directly participating in the operation" include persons who have consented to the operation of the UAS overhead.

Associated Builders and Contractors also proposed lifting the restriction on flight over non-participants on a construction site, so long as those people have been notified of the small UAS operations, wear hard hats, and have been provided orientation regarding the equipment prior to entering the work site.

Kapture Digital Media questioned whether people can become "directly involved" in an operation if they are notified of the operation by signs posted around the area of operation, or, alternatively, whether people can only become "directly involved" in an operation by signing a waiver. Vail Resorts noted that many of the best uses of UAS technology at ski areas would necessarily involve some temporary amount of flight over individuals who are not "necessary for the safe operation" of the small UAS, which is how the NPRM defined "directly involved in the operation." Consequently, Vail asserted that a strict ban on operations over people not "directly involved" in the operation "could have the unintended consequence of making many potentially critical ski resort drone operations noncompliant with FAA regulations." As such, Vail said FAA should broaden the definition of "directly involved" to include "those people who are aware of and have consented to being involved in the drone operation by, for example, reading particular signage or signing a release." Similarly NoFlyZone.org said operations over non-participants should be permitted provided the operator has advised all non-participants to remain clear of the small UAS launch/recovery area, and also advised all non-participants that the small UAS does not comply with Federal safety regulations for standard aircraft.

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[102] Other commenters who urged FAA to reconsider the proposed prohibition as it applies to agricultural operations include the National Farmers Union, National Corn Growers Association, National Association of Wheat Growers, and the Virginia Agribusiness Council.

The National Ski Area Association (NSAA) pointed out that for UAS operations that may involve operations near skiers and snowboarders, or participants and spectators in special events, ski areas could inform participants of the event and associated risks and could obtain consent prior to using a UAS. NSAA suggested further that ski areas "could be obligated to determine, based on the event or assemblage of persons, acceptable proximity parameters, either laterally or vertically."

The term "directly participating" refers to specific personnel that the remote pilot in command has deemed to be involved with the flight operation of the small unmanned aircraft. These include the remote pilot in command, the person manipulating the controls of the small UAS (if other than the remote pilot in command), and the visual observer. These personnel also include any person who is necessary for the safety of the small UAS flight operation. For example, if a small UAS operation employs a person whose duties are to maintain a perimeter to ensure that other people do not enter the area of operation, that person would be considered a direct participant in the flight operation of the small UAS.

Anyone else would not be considered a direct participant in the small UAS operation. Due to the potential for the small unmanned aircraft to harm persons on the ground, the FAA does not consider consent or the need to do other work in the area of operation to be a sufficient mitigation of risk to allow operations over people. The FAA considers the risks associated with allowing operations over directly participating persons to be a necessary risk associated with the safety of flight because if UAS crewmembers are prohibited from standing near a flying unmanned aircraft, they may be unable to complete their duties. Additionally, some small UAS operations require the aircraft to be hand-launched or retrieved by a person, so it would not be possible to conduct such operations without permitting operations over those people.

Further, the FAA notes that people directly participating in the flight operation of a small unmanned aircraft have situational awareness that provides them with increased ability to avoid a falling unmanned aircraft. Conversely, a non-participant who has consented to allowing operations overhead may not share the same situational awareness and consequently may not be able to avoid being struck by a small unmanned aircraft. For this reason, a remote pilot intending to operate small unmanned aircraft over non- participants must apply for a waiver under this part, which will allow the FAA to evaluate each applicant's operation on a case-by-case basis.

The American Fuel & Petrochemical Manufacturers and Employees, Associated General Contractors of America, Skycatch, Clayco, AECOM, DPR Construction, and the State of Utah Governor's Office of Economic Development said operations over uninvolved persons should be permitted at areas closed to the public (*e.g.*, construction sites, movie sets), as long as the uninvolved persons are aware of and consent to the activity. The National Association of Broadcasters, National Cable & Telecommunications Association, and Radio Television Digital News Association, commenting jointly, pointed out that the FAA has already granted a number of section 333 exemptions for aerial photography and filming which have allowed small UAS flights over consenting production personnel, and thus urged the FAA to define "directly participating in the operation" to include persons who have "implicitly consented to the operation of the sUAS overhead by nature of their presence on a set where sUAS filming is occurring." The Motion Picture Association of America similarly asked the FAA to specify that "all parties on a closed set" qualify as "directly participating in the operation," thereby ensuring that current practices under the filming exemptions are consistent with § 107.39.

As pointed out by the commenters, the FAA currently allows small unmanned aircraft flight over people in only one type of situation: A closed-set movie set which is a controlled-access environment where the person in charge has extensive control over the positioning of people who are standing near the small unmanned aircraft. The FAA currently considers each movie-set exemption on a case-by-case basis through the section 333 exemption process. The FAA will continue considering flight over people on a movie-set on a case-by-case basis through the waiver process in this rule. The FAA notes that this framework is consistent with the regulatory framework used for motion picture and television filming in manned-aircraft operations, where a waiver is usually required prior to using an aircraft for filming purposes.[103] The FAA also notes that, as discussed in section II.C of this preamble, current section 333 exemption holders who are allowed to fly over people when filming a movie will be permitted to continue operating under their section 333 exemption until they are able to obtain a waiver under part 107.

With regard to flight over people in other controlled-access environments, such as construction sites, the FAA will consider that issue on a case-by-case basis through the waiver process. This process will allow the FAA to consider the specific nature of the controlled-access environment to determine how that environment would mitigate the risk associated with flight over people.

The Association of American Railroads said operations over railroad personnel during a railroad incident investigation or routine railroad inspections should be permitted. The Association noted that the risks associated with such operations can be mitigated by giving those personnel a small UAS operations and safety briefing before flight is commenced.

The FAA disagrees. While this rule will allow flight over direct participants in a small UAS operation after they receive important safety information, the information does not, by itself, completely mitigate the risk posed by flight over people. As discussed earlier, the reason this rule allows flight over direct participants in a small UAS flight operation is because without this exception, those people may be unable to complete their duties to ensure the safety of the small UAS flight operation. People who are not directly participating in the small UAS flight operation are not needed to ensure the safety of that operation, and as such, this rule will not allow flight over those people without a waiver.

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[103] *See* FAA Order 8900.1, vol. 3, ch. 8, sec. 1.

The Property Drone Consortium said homeowners inside their homes while an inspection operation is conducted overhead, or homeowners who are in their back yards while an inspection operation is conducted in their front yards, should be considered "protected" for purposes of the ban on flight over non-participants.

A homeowner who is inside his or her home would be under a covered structure and flight over him or her would be permitted if the home can provide reasonable protection from a falling small unmanned aircraft. However, a person who is inside his or her backyard would presumably not be under a covered structure and could be injured by a falling small unmanned aircraft. Accordingly, a person who is in his or her backyard would not be considered protected if that backyard is not covered.

The Institute of Makers of Explosives asked the FAA to expand or clarify the proposed prohibition on operation of a small UAS over "most persons" to clearly define the persons over whom UAS operations may not be conducted. IME specifically recommended that a UAS not be allowed to operate over any person conducting operations with explosives under the jurisdiction of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, and that the restriction apply to unauthorized, unrelated operators.

As discussed earlier, this rule will prohibit operations over people who are not directly participating in the flight operation of a small UAS and who are not under a covered structure or in a stationary covered vehicle that could reasonably protect them from a falling small unmanned aircraft. This prohibition applies regardless of what the person who is not directly participating in the small UAS flight operation is doing.

A number of commenters sought clarification as to what the FAA considers to be an operation "over a human being." Southern Company asserted that, as written, the proposed provision could either be read strictly, to prohibit operations directly overhead, or it could be read more broadly, to prohibit operations directly overhead and within a short lateral distance of the person. Kansas University UAS Program similarly said the FAA needs to clarify whether by "over a human being" means directly overhead or "within an area that the aircraft could come down on the person."

Similarly, NAMIC asked the FAA to provide further guidance as to whether the small UAS operation is prohibited directly above persons or "within a proximate area over persons." NAMIC acknowledged that it does not have the FAA's understanding of aeronautics or physics, but nevertheless stated its belief that a terminated UAS at 500 feet and 100 mph seems unlikely to fall directly onto a person standing directly under the UAS at the time of the termination. An individual commenter asserted that a small UAS flying towards a person, even if not directly above that person, could still pose a threat. By way of example, the commenter stated that a multi-rotor helicopter flying at a ground speed of 30 mph at 400 feet AGL that experiences a catastrophic failure "will transcribe a parabolic arc that will extend horizontally several hundred feet in the direction of travel."

Matternet also stated that the proposed restriction "appears to be based on the faulty premise that aircraft only fall straight down when they malfunction or when pilots err" when, in fact, an aircraft in flight will typically follow its original trajectory, subject to aerodynamic forces and gravity. Thus, the company asserted, an operation that passes directly over a person is not significantly more dangerous than an operation that passes several linear feet, or even tens of linear feet, away from that person on the ground.

The term "over" refers to the flight of the small unmanned aircraft directly over any part of a person. For example, a small UAS that hovers directly over a person's head, shoulders, or extended arms or legs would be an operation over people. Similarly, if a person is lying down, for example at a beach, an operation over that person's torso or toes would also constitute an operation over people. An operation during which a small UAS flies over any part of any person, regardless of the dwell time, if any, over the person, would be an operation over people.

The remote pilot needs to take into account the small unmanned aircraft's course, speed, and trajectory, including the possibility of a catastrophic failure, to determine if the small unmanned aircraft would go over or strike a person not directly involved in the flight operation (non-participant). In addition, the remote pilot must take steps using a safety risk-based approach to ensure that: (1) The small unmanned aircraft does not operate over non-participants who are not under a covered structure or in a stationary covered vehicle; (2) the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason (§ 107.19); and (3) the small UAS is not operated in a careless or reckless manner so as to endanger the life or property of another (§ 107.23). If the remote pilot cannot comply with these requirements, then the flight must not take place or the flight must be immediately and safely terminated.

Several commenters recommended that the FAA include specific vertical *and* horizontal minimum-distance requirements. Continental Mapping and MAPPS recommended that no operations be permitted "within 50 meters vertically or horizontally from people, animals, buildings, structures, or vehicles, with a particular emphasis on takeoff and landing." MAPPS pointed out that its testing has shown this is a safe distance to perform emergency landings should something go wrong, particularly with rotary wing platforms. NAMIC recommended that FAA prohibit persons from "intentionally operat[ing] a small UAS over or within 100 feet" from a human being who is not directly participating in its operation or not located under a covered structure.

State Farm suggested that FAA remove the word "over" from proposed § 107.39, and instead prohibit persons from "intentionally operat[ing] a small UAS within 100 feet" from a human being who is not directly participating in the operation or not located under a covered structure. Aviation Management similarly suggested that the FAA provide protection to humans on the ground "in close proximity to" small UAS operations by requiring that a small UAS remain a minimum of 100 feet from the nearest human who is not directly participating in the operation (a requirement the commenter pointed out is imposed by Canada and Australia). Stating that an aircraft "needs a fall radius that contemplates kinetic energy, max speed, max altitude," an individual commenter suggested that small UAS flight be restricted to a vertical cylinder with a radius of 200 feet, centered over an animal or persons not directly involved in the operation.

Several other commenters made suggestions as to how the FAA can more precisely define the requisite separation between a small UAS and persons not involved in an operation. The Civil Aviation Authority of the Czech Republic said the proposed prohibition "should be extended to a safety horizontal barrier, not only directly above people, but also not in an unsafe proximity (for multicopters this should be twice the actual height AGL)." NOAA and Southern Company said proposed § 107.39 should be revised to include specific lateral distances. Colorado Ski Country USA said the final rule should include a definition of "Operations Over a Human Being" that sets out "the proximity in which UAS operations would be prohibited." The New Hampshire Department of Transportation suggested that the final rule include a "specified three-dimensional space that a small UAS is prohibited from when operating over any person not directly involved with the operation." The Hillsborough County Aviation Authority suggested that the lateral separation from people or structures be revisited to consider a safety area around the UAS "with regards to momentum, wind drift, malfunction, etc. that would affect people or structures nearby."

The National Association of Flight Instructors (NAFI) advocated for a larger separation between small UAS and non-participants, and recommended that proposed § 107.39 be revised to prohibit operation of a small UAS "closer than 400 feet" to persons not directly participating in the operation or not located under a covered structure or to "any vessel, vehicle, or structure not controlled by the operator or for which written permission by the owner or licensee of that vessel, vehicle or structure has not been obtained." NAFI went on to assert that there is no reliable or sufficient database from which to project accident or injury rates, and to urge FAA to "proceed cautiously and relatively slowly in significantly reducing the protection currently afforded to persons and property on the surface from the hazards of small unmanned aircraft systems.

Green Vegans asserted that under Public Law 112–95, Congress directed the FAA to implement restrictions for small UAS operations which "include maintaining a distance of 500 feet from persons."

The FAA considered requiring minimum stand-off distances in this rule, but ultimately determined that, due to the wide range of possible small unmanned aircraft and small UAS operations, a prescriptive numerical stand-off distance requirement would be more burdensome than necessary for some operations while not being stringent enough for other operations. For example, a 5-pound unmanned rotorcraft flying at a speed of 15 mph in a remote area with natural barriers to stop a fly-away scenario would likely not need a stand-off distance as large as a 54-pound fixed-wing aircraft traveling at a speed of 100 mph in an urban area with no barriers.

Thus, instead of imposing a prescriptive stand-off distance requirement, this rule will include a performance standard requiring that: (1) The small unmanned aircraft does not operate over a person who is not directly involved in the flight operation unless that person is under the appropriate covered structure or vehicle; and (2) the remote pilot ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason (§ 107.19(c)). This performance-based approach is preferable, as it will allow a remote pilot in command to determine what specific stand-off distance (if any) is appropriate to the specific small unmanned aircraft and small UAS operation that he or she is conducting. In response to Green Vegans, the FAA notes that Public Law 112–95 does not direct the FAA to promulgate a small UAS rule that includes a requirement for a small unmanned aircraft to maintain a distance of 500 feet from persons.

Some commenters proposed specific vertical distances that they claimed could permit safe operations of a small UAS over persons not directly involved in its operation. Asserting that flights "well above" a person's head pose minimal additional safety risks, the News Media Coalition recommended that the FAA permit overhead flight so long as the UAS remains at least 50 feet vertically from any person not involved in the operation of the UAS. Cherokee National Technologies and an individual commenter recommended that operations be permitted above people not directly involved in an operation, so long as those operations are not conducted less than 100 feet above those people.

These commenters did not provide data that the FAA could use to evaluate this assertion. The FAA notes, however, that a small unmanned aircraft falling from a higher altitude may actually pose a higher risk because the higher altitude would provide the small unmanned aircraft with more time to accelerate during its fall (until it reaches terminal velocity). This may result in the small unmanned aircraft impacting a person on the ground at a higher speed and with more force than if the small unmanned aircraft had fallen from a lower altitude.

The National Association of Broadcasters, the National Cable & Telecommunications Association, and the Radio Television Digital News Association, commenting jointly, said the proposed rule would limit the potential of unmanned aircraft to serve the public interest, particularly with respect to newsgathering. The associations recommended a few changes to "increase the utility of sUAS for newsgathering and video programming production purposes." First, the associations said the FAA "should clarify that only flights directly over non-participating people are barred"—*i.e.*, the "FAA should specify that the rule would still permit sUAS with a camera that is capable of filming—at an angle—an area where people are present." Second, because "the proposed rule raises the question of what level of knowledge a reasonable operator can be expected to have," the associations said the FAA "should clarify that the operator must have a good faith belief that sUAS will not be flying over people." Third, the associations said "the FAA should consider relaxing or removing this requirement for sparsely populated areas," which "would give newsgatherers and video programming producers the freedom to cover events and film entertainment programming with sUAS in areas where the risk to human beings on the surface is extremely low."

NSAA and several individual commenters recommended that the final rule make clear that the prohibition does not extend to incidental or momentary operation of a UAS over persons on the ground. The Organization of Fish and Wildlife Information Managers requested that exemptions for "unintentional flyovers" be included in the final rule. The Organization noted that, while conducting fish and wildlife surveys in remote areas, UAS may inadvertently be flown over hunters, anglers, hikers, campers, and other individuals participating in recreational activities. The Organization went on to say that "[i]n areas where a UAS may be flown over a person, either intentionally or unintentionally, public notice of the planned survey activity could be issued in advance of the survey."

In response, the FAA clarifies that this rule allows filming of non-participants at an angle as long as the small unmanned aircraft does not fly over those non-participants.

With regard to sparsely populated areas, as discussed earlier, the restriction on flight over people is focused on protecting the person standing under the small unmanned aircraft, which may occur in a sparsely populated area. The FAA notes, however, that because sparsely populated areas have significantly fewer people whose presence may restrict a small UAS operation, a newsgathering organization will likely have significant flexibility to conduct small UAS operations in those areas.

With regard to the remote pilot's good-faith belief and momentary operation of a small unmanned aircraft over a person on the ground, the FAA notes that the remote pilot in command is responsible for ensuring that the small UAS does not fly over any non-participant who is not under a covered structure or vehicle. This may require creating contingency plans or even terminating the small UAS operation if a non-participant unexpectedly enters the area of operation. The FAA declines to amend this requirement because, as discussed earlier, this requirement creates a performance-based standard for a stand-off distance that the remote pilot in command must use to ensure that his or her small unmanned aircraft does not fly over a person.

The National Association of Realtors suggested that more guidance is needed to clarify the operator's obligations for communicating with bystanders that a UAS flight will occur in the area. Specifically, the commenter wondered: (1) How much notice is required to clear an area of bystanders before the flight takes place; (2) how the notice should be given; (3) for how long an area should be required to be cleared of bystanders; and (4) within what distance bystanders should be provided notice.

This rule will not require that notice be given to non-participants prior to the operation of a small unmanned aircraft. Likewise, the rule will not prohibit the remote pilot from employing whatever means necessary to ensure that the small unmanned aircraft does not endanger the safety of bystanders, such as providing prior notice of operations. Providing notice to bystanders is simply one method that a remote pilot in command can utilize to clear the operating area (assuming that non-participants comply with the notice). However, providing such notice will not relieve the remote pilot in command of his or her duty to ensure the safety of non-participants.

An individual commenter asserted that, taken literally, the proposed prohibition "would require a UA operator to know at all times, the exact location of all people on the ground who are within VLOS of his or her UA."

As stated earlier, this rule imposes a performance-based requirement concerning flight over people. It is up to the remote pilot in command to choose the specific means by which he or she will satisfy this requirement. The guidance issued concurrently with this rule provides some examples of means that a remote pilot in command could utilize to satisfy the prohibition against flight over non-participants in part 107.

NAMIC sought guidance with respect to when the presence of a third party "can prevent or interrupt UAS use." Specifically, NAMIC questioned whether, if an insurance review of a private building requires some limited flight over a public street, the street needs to be closed or, alternatively, if the flight can simply take place when there are no pedestrians on the street. An individual commenter similarly questioned what happens when a person enters the operational area once the operation has commenced and the UAS is airborne—*i.e.*, whether the UAS may loiter until the person clears the area or whether the operation must be terminated.

Liberty Mutual Insurance Company said that, given the fact that almost any operation of a small UAS over urban areas will necessarily result in flight over human beings, "the final rule should include a reasonableness standard whereby, through a safety assessment such as currently permitted in section 333 exemptions, an operator may determine that a flight over a particular area does not pose a reasonable threat to persons who are not covered by a structure." If such a reasonable determination is made, Liberty Mutual said, the flight should be allowed. Liberty Mutual noted that this change "would be particularly important for assessing disaster situations or performing surveys over areas larger than a single structure."

As discussed earlier, this rule prohibits any small unmanned aircraft from flying over a person who is not a direct participant in the small UAS flight operation and is not under a covered structure or vehicle. This is a performance standard: It is up to the remote pilot in command to choose the best way to structure his or her small UAS operation to ensure that prohibited flight over a person does not occur and that the small unmanned aircraft will not impact a person if it should fall during flight. The FAA anticipates that the remote pilot in command will need to determine an appropriate stand-off distance from nearby persons in order to comply with this requirement. With regard to the specific examples provided by the commenters, the FAA notes that the remote pilot in command is not required to cease small UAS flight if he or she can continue operating in a manner that ensures that the small unmanned aircraft will not fly over an unprotected non-participant.

Several individual commenters suggested proposed § 107.39 be expanded to prohibit operation over any personal property without the permission of the property owner.

Property rights are beyond the scope of this rule. However, the FAA notes that, depending on the specific nature of the small UAS operation, the remote pilot in command may need to comply with State and local trespassing laws.

NAMIC questioned whether a UAS operation over private property is prohibited if the owner wants to watch, "even if the owners agree that they may be in danger."

Southern Company suggested that FAA allow operations over any person who is located on the property, easement, or right of way of the person or entity for whom the small UAS is operated, and any person who is participating in the activity for which the small UAS is being operated. This commenter said such mitigating restrictions could include a lower operating ceiling, lateral-distance limits, a lower speed restriction, and a prohibition on operations over large gatherings of people.

The flight-over-people restriction is intended to address the risk of a small unmanned aircraft falling on and injuring a person. Being the owner or easement-holder of the area of operation does not reduce a person's risk of being hit by the small unmanned aircraft. Accordingly, this rule will not impose a different safety standard based on the ownership status of the person over whom the small unmanned aircraft is operating. With regard to additional operational mitigations, the FAA will consider those on a case-by-case basis through the waiver process.

The Wisconsin Department of Transportation (WisDOT) expressed "concern that this (107.39) restriction may severely limit the ability of public sector agencies to incorporate UAS" into certain activities, such as bridge inspections, traffic and incident management activities on public highways, and search and rescue operations.

NSAA also said operations over the public should be permitted "in non-normal or emergency operations where life, limb, and property are at risk." UAS Venture Partners similarly sought an exemption from the proposed prohibition on operations over persons not directly involved in the operation for Civic Municipal Rescue Service agencies and the trained rescue first responders who will be operating the UAS devices. Vail also said the final rule should include specific exemptions from the "directly involved" requirement "for temporary flight over uninvolved persons for emergency and safety uses."

As discussed in section III.C.3 of this preamble, this rule applies only to civil small UAS operations. It does not apply to public UAS operations which may include governmental functions such as public road and bridge inspections, traffic control and incident management on public highways, and search and rescue operations. To that end, a public UAS operator such as WisDOT may apply for a COA to use its UAS for specific governmental functions instead of operating and complying with the provisions of part 107.

With regard to emergency and search-and-rescue operations, it should be noted that those operations are typically conducted by local, State, or Federal government agencies (such as fire departments or police) as public aircraft operations. Public aircraft operations will be granted operational authority by way of a COA and will not be subject to part 107. With regard to civil small UAS operations, the FAA emphasizes that the remote pilot in command's ability to deviate from the requirements of part 107 to address an emergency (discussed in section III.E.1.d of this preamble) is limited to emergency situations that affect the safety of flight. For emergency situations that do not affect the safety of flight, the remote pilot in command should contact the appropriate authorities who are trained to respond to emergency situations.

The Professional Helicopter Pilots Association suggested that the FAA provide a means by which individuals or companies can limit or eliminate the overhead or adjacent operation of UAS by anyone other than properly certified public service/public safety operators.

Though a governmental entity may choose to operate a small UAS under the civil regulatory structure of part 107, the FAA does not agree that operational distinctions should be made within part 107 regarding the specific entity that is conducting a civil operation. To that end, under part 107 all civil small unmanned aircraft operations are prohibited from operating over a person not directly participating in the operation of the small unmanned aircraft and not under a covered structure or in a covered vehicle and not directly participating in the flight operation of the small unmanned aircraft.

The International Association of Amusement Parks and Attractions (IAAPA) stated safety and privacy concerns are implicated by third-party small UAS operations. IAAPA stated that the operation of UAS over amusement parks and attractions by third parties is also implicated by proposed section 107.39. IAAPA asserted that the facility operator can carefully control the use of UAS over a person who is not directly participating in its operation if the UAS is operated by the facility or its designee, but this degree of control is impossible when hobbyists or other third-parties who do not have the facility owner's permission operate UAS near or over the perimeter or interior of amusement parks and attractions. IAAPA stated that amusement parks and attractions generally contain large numbers of people, and that the safety risks posed to employees and to visitors enjoying rides potentially traveling 100 miles per hour, watching shows, or walking through amusement parks and attractions are considerable and outside the control of facility operators.

The restriction on flight over people applies regardless of the location in which that flight occurs. Thus, a remote pilot in command may not operate a small unmanned aircraft over a non-participant in an amusement park who is not under a covered structure or in a vehicle. Additionally, the remote pilot in command must ensure that the small unmanned aircraft does not pose an undue hazard to a person in the event of a loss of control for any reason. The FAA also notes that hobbyists or other third parties who do not have the facility owner's permission to operate UAS near or over the perimeter or interior of amusement parks and attractions may be violating State or local trespassing laws.

Aerial Services, the National Society of Professional Surveyors, Continental Mapping, MAPPS, and 12 members of the Wisconsin Legislature said the ban on flights "over populated areas" needs to be removed or modified, because the definition of "populated area" is inadequate and seems to mean "any single person within the area of operation that is not inside a structure." In response, the FAA notes that this rule does not ban flights over a "populated area." This rule only restricts flights over a person who is not directly participating in the flight operation and who is not inside a covered structure or vehicle.

v. Preflight Briefing

The NPRM proposed to require that, prior to flight, the remote pilot in command must ensure that all persons directly involved in the small UAS operation receive a briefing that includes operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards. The FAA proposed this requirement because, as discussed in the previous section, this rule will allow a small unmanned aircraft to fly over people who are directly participating in the small UAS operation. A preflight familiarization briefing would help ensure that these people have greater situational awareness and are better able to avoid the flight path of the small unmanned aircraft if the remote pilot in command were to lose positive control of the aircraft or if the aircraft were to experience a mechanical failure.

The Travelers Companies said the FAA should modify proposed § 107.49 to eliminate the "briefing" requirement for operations conducted without a visual observer or other crew members.

If the remote pilot in command is conducting a small UAS operation entirely by him or herself, there is no one else that he or she can brief. Additional regulatory text is not necessary to explain this concept. However, upon reviewing the regulatory text of § 107.49(a)(2), the FAA noted that the proposed briefing requirement would apply to people who are "involved" in the small UAS operation, while the exception to the flight-over-people restriction discussed earlier will apply to people who are "directly participating" in the small UAS operation. Because the briefing requirement is supposed to apply to people who may have a small unmanned aircraft fly over them, the FAA has amended § 107.49(a)(2) to reference people who are directly participating in the small UAS operation.

The FAA also noted that the proposed requirement to convey important information in the form of a briefing was needlessly prescriptive. Thus, the FAA has amended § 107.49(a)(2) in the final rule to simply require that the remote pilot in command ensure that persons directly participating in the small UAS operation are informed about the operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards. This information could be conveyed through a briefing or through some other means that would reasonably be expected to inform the recipient.

vi. Preflight Assessment of the Operating Area and Ensuring That the Aircraft Poses No Undue Hazard

Within the above constraints, the NPRM proposed a two-part performance-based standard for mitigating loss-of-positive control risk. The first part consisted of a preflight assessment of the operating environment. The second part consisted of a requirement to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of positive control of the aircraft for any reason.

1. Preflight Assessment of the Operating Environment

The NPRM proposed to require that, prior to flight, the operator must become familiar with the confined area of operation by assessing the operating environment and assessing risks to persons and property in the immediate vicinity both on the surface and in the air. As part of this operating environment assessment, the operator would need to consider conditions that could pose a hazard to the operation of the small UAS as well as conditions in which the operation of the small UAS could pose a hazard to other aircraft or persons or property on the ground. Accordingly, the operating environment assessment proposed in the NPRM would include the consideration of: (1) Local weather conditions; (2) local airspace and any flight restrictions; (3) the location of persons and property on the ground; and (4) any other ground hazards.

For the reasons discussed below, this rule will finalize the operating environment assessment as part of the preflight familiarization provision as proposed in the NPRM, but will change the reference from "operator" to "remote pilot in command" to reflect the change in the crewmember framework discussed in section III.E.1 of this preamble.

Boeing asserted that the proposed rule imposes a requirement to assess risk, but provides no criteria against which to measure that risk. The commenter therefore recommended the FAA revise the proposed provision to include criteria to measure risk (*e.g.,* reference the Structural Repair Manual (SRM) or similar criteria). The commenter also noted that there is no requirement to determine if the risk is acceptable, and recommended the FAA clarify this issue to ensure appropriate compliance with, and consistent interpretation of, the regulation.

As discussed in the next section of this preamble, this rule will require the remote pilot in command to ensure that the small UAS will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason. Section 107.49 is intended to help the remote pilot in command satisfy this requirement by having the remote pilot in command assess the operating environment so that he or she can design the operation, as well as any mitigation, to ensure that the small unmanned aircraft does not create an undue hazard if positive control is lost.

As a performance-based requirement, it is not the intent of this section to be prescriptive with regard to how remote pilots conduct an assessment of their operating environment. Because there is a diverse range of aircraft and operating environments that could exist for part 107 operations, a prescriptive preflight-assessment standard may be more burdensome than necessary in some instances. For example, a remote pilot in command operating a small UAS in an empty rural area would not need to look at the same things to assure the safety of the operation as a remote pilot in command operating a small UAS in a crowded urban environment. The guidance material which the FAA has issued concurrently with this rule provides examples and best practices for how to conduct the preflight assessment of the operating area and assess risks that may affect the small UAS operation. The FAA will also consider publishing industry best practices in future small UAS guidance that will assist remote pilots in assessing risk.

The Professional Helicopter Pilots Association said that, prior to flight, the remote pilot should be required to obtain a briefing, similar to a manned-aircraft pilot's briefing, which would include weather, NOTAMs, and any other pertinent information for the area in which they intend to operate.

As discussed in sections III.E.2 and III.E.5 of this preamble, this rule includes requirements for assessing the operating environment with regard to weather and NOTAMs. The remote pilot in command is responsible for satisfying those requirements. The remote pilot may choose to use the means suggested by the commenter to help satisfy his or her regulatory obligations, or he or she may choose some other method of obtaining the pertinent information. As long as the pertinent regulatory requirements are fulfilled, the means by which the remote pilot in command accomplishes this goal is within his or her discretion.

API encouraged the FAA to consider all provisions of the Helicopter Safety Advisory Conference's Unmanned Aerial Systems Guidelines, including provisions related to pre-flight briefings, as the rule is finalized. The FAA concurs with the API's recommendation to consider the provisions of the Helicopter Safety Advisory Conference Recommended Practices 15–1 Unmanned Aerial Systems Guidelines document (HSAC RP UASRP 15–1) published in February 2015. After reviewing the HSAC RP UASRP 15–1 guidelines, the FAA finds that the recommended practices address all of the requirements found in § 107.49.

The Kansas State University UAS Program also recommended that the assessment consider potential issues with link integrity to the aircraft from obstacles between the ground antennas and the aircraft (*e.g.,* trees) or electromagnetic interference from nearby RF sources such as radio towers and radars. In response, the FAA notes that this concern is addressed in § 107.49(a)(3). Section 107.49(a)(3) requires that the remote pilot ensure that all control links between ground station and the small unmanned aircraft are working properly. The remote pilot in command may not commence a small UAS operation if a control link is working improperly (whether as a result of radio interference or for some other reason). The FAA also expects that the remote pilot in command will develop a contingency plan for ensuring that the small unmanned aircraft does not pose an undue hazard to other aircraft, people, or property if positive control of the small unmanned aircraft is lost through a disruption in the data control link.

2. Undue Hazard If There Is a Loss of Control

The NPRM proposed that, after becoming familiar with the confined area of operation and conducting an operating environment assessment, the operator must ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of positive control of the aircraft for any reason. The FAA proposed this performance-based requirement instead of a more prescriptive standard because it would provide the operator with significant flexibility to choose how to mitigate the hazards associated with loss of aircraft control.

In a joint submission, PlaneSense and Cobalt Air stated that the language in proposed § 107.19(b) sets a different standard from that in § 107.23 (hazardous operation). They noted that while § 107.19(b) requires that small UAS operations "pose no undue hazard to other aircraft, people or property[,]" § 107.23(b) prohibits persons from operating a small UAS in a "careless or reckless manner so as to endanger the life or property of another[.]" The commenters argued that these two standards are not consistent, because § 107.23 does not include other aircraft within the scope of the third parties who must be protected. The commenters went on to say that these discrepancies create inconsistencies which result in incomplete guidance for the operators of small UAS, and may result in an increase in danger to the public. The commenters suggested that the appropriate standard is to be found in § 107.19(b), and that § 107.23 should be changed to match it. Finally, the commenters asked the FAA to clarify whether "other aircraft" includes other unmanned aircraft.

Part 107 prohibits a small UAS operation from endangering life or property, and prohibits a remote pilot from operating a small UAS in a careless or reckless manner. Property includes other aircraft, including other unmanned aircraft. These two requirements complement, rather than contradict, one another, and provide the remote pilot with the flexibility to adjust his or her operation according to the environment in which he or she is operating. For example, if the operation takes place in a residential area, the remote pilot in command could ask everyone in the area of operation to remain inside their homes while the operation is conducted. If the operation takes place in an area where other air traffic could pose a hazard, the remote pilot could advise local air traffic control as to the location of his or her area of operation and add extra visual observers to the operation so that they can notify the remote pilot if other aircraft are approaching the area of operation. These precautions would be one way to ensure that the operation will not pose an undue hazard to other aircraft, people or property in the event of a loss of control of the aircraft. Additionally, during the operation of the small unmanned aircraft, the remote pilot in command is prohibited from operating the aircraft in a careless and reckless manner, further ensuring that the operation does not pose an undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft.

The NextGen Air Transportation Program, NC State University commented that § 107.19(b) is "not realistic." The commenter stated that the remote pilot can do everything possible to minimize the risk and harm possible in the event of loss of positive control, but asserted that requiring that no damage be caused without requiring fly-away prevention or other risk management mechanisms does not align with the general NPRM objectives.

Similarly, ALPA stated that many small unmanned aircraft, particularly those with multiple propulsion units, may become highly unstable when they enter a state of "lost link" or "loss of positive control." This commenter also asserted its strong belief that if lost link occurs, mitigations to safely perform auto-hover, auto-land, and return-to-home maneuvers, and geo-fencing protection, must be incorporated into the navigation and control systems for a small UAS to safely land without harm to persons or property.

The undue hazard standard in this rule is a performance-based standard, which the remote pilot in command may satisfy through operational or equipage/technological mitigations. In section III.E.3.b.vi of this preamble, the FAA describes equipment that remote pilots may incorporate into their small unmanned aircraft systems as one means of complying with this requirement. Due to the diversity and rapidly evolving nature of small UAS operations, this rule allows individual remote pilots to determine what equipage methods, if any, mitigate risk sufficiently to meet the performance-based requirements of this rule, such as the prohibition on creating an undue hazard if there is a loss of aircraft control. This provides the greatest amount of regulatory flexibility while maintaining the appropriate level of safety commensurate with part 107 operations.

The methods suggested by the commenters are some, but not all of the possible mitigations available for remote pilots of UAS. The FAA recognizes that it is impossible to prevent every hazard in the event of a loss of control of the small unmanned aircraft; however, as several commenters stated, this rule requires remote pilots to do everything possible to minimize risk and harm in the event of loss of positive control.

NOAA commented that § 107.19(b) should be revised to include "protected wildlife" in the class of entities to be protected from undue hazard in the case of loss of positive control. NOAA states that this change would acknowledge the importance of other Federal statutes already in place to protect, conserve, and recover vulnerable wildlife populations and ensure the FAA-regulated community is aware of them and that the final rule does not contradict them.

The FAA notes that other Federal statutes already in place establish laws on the protection of wildlife. Independent of this rule, the remote pilot in command is responsible for complying with any other Federal, State, or local laws that apply to his or her small UAS operation.

vii. Automation

Several commenters addressed the issue of autonomous operations of small UAS. An autonomous operation is generally considered an operation in which the remote pilot inputs a flight plan into the control station which sends it to the autopilot onboard the small unmanned aircraft. During automated flight, flight control inputs are made by components onboard the aircraft, not from a control station. Thus, the remote pilot in command could lose the control link to the small unmanned aircraft and the aircraft would still continue to fly the programmed mission or return home to land. During automated flight, the remote pilot in command also must have the ability to change routing/altitude or command the aircraft to land immediately. The ability to direct the small unmanned aircraft may be through manual manipulation of the flight controls or through commands using automation.

For the reasons discussed below, this rule will allow autonomous small UAS operations. However, the remote pilot in command must retain the ability to direct the small unmanned aircraft to ensure compliance with the requirements of part 107.

ALPA, the U.S. Hang Gliding & Paragliding Association, and the Permanent Editorial Board of the Aviators Model Code of Conduct Initiative asserted that the NPRM says autonomous operations would be permitted for small UAS, but then fails to discuss such operations further. ALPA generally opposed allowing autonomous operations for small UAS. The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative said the NPRM's mention of autonomous operations "requires explanation and context." The U.S. Hang Gliding & Paragliding Association said it would be opposed to such operations "unless the operator has the ability to take positive control immediately and redirect the sUAS."

The Air Medical Operators Association raised concerns about the safety of "automated UAS," saying that such aircraft do not have the capability to maintain the necessary separation from manned aircraft. The association acknowledged, as noted in the NPRM, that the many advancements in anti-collision avoidance systems have been very effective in reducing the rate of mid-air collisions, but went on to say that the evidence of the effectiveness of such technology in preventing collisions between UAS and manned aircraft "would have to be overwhelming in order to alleviate the safety concerns of the low-altitude flying public."

Other commenters supported allowing autonomous operations for small UAS. Yale University recommended the final rule clarify that small UAS operators "may rely on autonomous or pre-programmed flight systems." Streamline Designs also stated that autonomous operations should be permitted, adding that some commercial uses "may depend heavily on automatic, stabilized flight." A number of individual commenters also supported autonomous operations. One such individual noted that there are situations where manual operations are more dangerous than automated operations, because computer controlled flight "can provide much greater control and safety by making corrective inputs on the order of hundreds of inputs per second."

The Property Drone Consortium recommended the final rule clarify what types of autonomous flights are permitted. The organization further recommended that autonomous flight be permitted without a need for the pilot/operator to intervene, although the pilot/operator "would always have the ability to intervene."

Several commenters suggested that autonomous operations be permitted in certain circumstances. LifeDrone, LLC sought a final rule that would specifically permit the autonomous operation of an emergency small UAS "that is initiated by an emergency signal along prearranged, low flight risk corridors at an altitude of 150 feet." Prioria Robotics suggested that autonomous operations should be permitted "with the simultaneous usage of first person video (FPV) flight equipment." AOPA recommended that the FAA consider an autopilot requirement for operations in controlled airspace, which the association said would provide "a layer of safety for operations in airspace that contains a concentration of manned aircraft."

The New England Chapter of AUVSI and Devens, IOP, commenting jointly, noted that "[t]he future will bring more reliable UAS technology that can be fully autonomous." The Competitive Enterprise Institute similarly noted that "[a] number of developers have expressed confidence that their sense-and-avoid technologies will soon permit safe automated operations."

Autonomous operations have numerous practical applications, including agricultural operations, aerial photography, and search and rescue. The FAA agrees with the commenters who pointed out that the ability for a small unmanned aircraft to fly autonomously could add significant utility to a small UAS operation and would further encourage innovation in the industry. Accordingly, this rule will allow the autonomous flight of small unmanned aircraft.

While sense-and-avoid equipment may one day be integrated into an autonomous aircraft to aid the pilot in avoiding hazards, as discussed in section III.E.2.a of this preamble, there is insufficient data to establish that UAS equipage is able to, at this time, detect other nearby aircraft in a manner that is sufficient to provide a substitute for the human pilot's ability to see and avoid those aircraft. Thus, a small unmanned aircraft may be unable to, without human input, yield the right of way to another user of the NAS that may enter the area of operation. Accordingly, this rule will require that the remote pilot in command have the ability to direct the small unmanned aircraft to ensure compliance with the provisions of part 107. In particular, the FAA emphasizes the requirements of §§ 107.37 and 107.39, which require the small unmanned aircraft to yield the right of way to all other users of the NAS and to avoid flying over a human being who is not directly participating in the small UAS operation and not under a covered structure.

There are a number of different methods that a remote pilot in command may utilize to direct the small unmanned aircraft to ensure compliance with part 107. For example, the remote pilot may transmit a command for the autonomous aircraft to climb, descend, land now, proceed to a new waypoint, enter an orbit pattern, or return to home. Any of these methods may be used to satisfactorily avoid a hazard or give right of way.

The FAA also emphasizes that, as discussed in section III.E.3.b.ii of this preamble, a person cannot act as a remote pilot in command in the operation of more than one small unmanned aircraft. Thus, this rule does not allow a person to use automation to simultaneously operate more than one small unmanned aircraft.

NetMoby recommended that FAA consider UAS that are pre-programmed to fly a mission to one or more waypoints as being "under positive control." The company recommended that, for local line-of-sight and multi-waypoint missions, "an active, live wireless link to the UAS be present and that loss of such a link below the link's reliable signal receive threshold for a period of greater than 15 seconds be defined as an instance of loss of positive control," thus triggering a return-to-home command.

As discussed earlier, this rule will allow a small unmanned aircraft to conduct preprogrammed flight through a waypoint as long as the remote pilot has the means to direct the aircraft to ensure compliance with part 107. With regard to when a return-to-home command should be triggered, the FAA declines to add this level of prescriptiveness to the rule. Instead, as discussed in section III.E.3.b.vi.2 of this preamble, the remote pilot in command must ensure that the small unmanned aircraft remains within visual line of sight and does not pose an undue hazard in the event of loss of positive control. The remote pilot in command may do this in the manner suggested by NetMoby or in another manner that satisfies the regulatory requirement.

viii. Other Equipage

In the NPRM, the FAA considered technological approaches, such as a flight termination system, to address a failure of the control link between the aircraft and the operator's control station. However, because small UAS operations subject to the proposed rule would pose a lower level of risk, the FAA proposed operational alternatives to mitigate their risk to an acceptable level without imposing an FAA requirement for technological equipage. Accordingly, the proposed rule did not mandate the use of a flight termination system or the equipage of any other navigational aid technology. The FAA invited comments on whether a flight termination system or any other technological equipage should be required and how it would be integrated into the aircraft for small UAS that would be subject to the proposed rule. The FAA also invited comments, with supporting documentation, as to the costs and benefits of requiring a flight termination system or other technological equipage.

1. Geo-fencing

A geo-fence is a virtual barrier which may prevent the small unmanned aircraft from either entering or exiting a geographically defined area. The area may be defined by a property owner or aircraft operator utilizing a combination of mapping programs and technology such as global positioning system (GPS) or radio frequency identification (RFID). Such technology could restrict the small unmanned aircraft from flying in locations where a flight may be restricted for security, safety, or other reasons.

The proposed rule did not establish geo-fencing equipment requirements for small UAS operating in the NAS. Instead, the NPRM proposed operational limitations such as requiring small UAS operators or visual observers to maintain visual line of sight in order to mitigate the risk of failure of the control link resulting in loss of positive control. After careful consideration of the comments, the FAA has decided not to add any geo-fencing equipment requirements in the final rule.

The Small UAV Coalition and Predesa supported the FAA's proposal to not require geo-fencing equipment under proposed part 107. However, these commenters noted the increased safety benefit provided by these systems in applications beyond visual-line-of-sight operations. Airware provided detailed information on its flight control system that offers geo-fencing and contingency management functionality. However, Airware noted that "[d]etailed airworthiness requirements [are] not needed for the very low risk environment proposed by this NPRM."

Conversely, some commenters disagreed with the FAA's proposal, and advocated for requiring geo-fencing technology on small UAS. Commenters including TTD, ALPA, AOPA, and the Electronic Privacy Information Center (EPIC) generally requested that the FAA require geo-fencing technology to be equipped on small UAS.

TTD, ALPA, the Air Medical Operators Association, and an individual supported geo-fencing technology standards that provide functional performance and reliability to ensure safe operation of small UAS in the event of loss of positive control or flying near restricted, unauthorized, or controlled airspace. ALPA urged the FAA "to consider means, other than the operator's skill and intention, to ensure the aircraft cannot be operated outside the confined area required to mitigate the collision risk." The Air Medical Operators Association requested that the FAA "test the effectiveness of these technologies and consider requiring them onboard UAS." AOPA stated that the FAA "should consider requiring small commercial UAS to use geo-fencing technology to ensure safety and reliability of their operations." The International Brotherhood of Teamsters stated that it supports "geo-fencing and other technologies which would directly inhibit the movement of an unauthorized UAS into secure areas."

MAPPS stated that "[a]ll UAS must be constructed with firmware that incorporates a database of restricted flight areas." MAPPS provided information on its concept of geo-fencing using cellular technology and requiring flight plans to be uploaded to the small UAS flight management system before each flight. MAPPS explained that this geo-fencing technology requires access to a "Master Restricted Flight Area Database (MRFAD)" including "any and all restricted flight areas" to prevent the operator from flying the small UAS into these restricted areas. An individual stated that the FAA should require "autonomous vehicles flying in, or within range of, airspace where UAS operations are prohibited" to have an updated database of that airspace.

Requiring the installation of a geo-fencing system capable of keeping small unmanned aircraft out of restricted and prohibited airspace would present a number of technical hurdles. Specifically, there are currently no design or performance standards for geo-fencing equipment to ensure safe and reliable integration into the NAS. Without appropriate geo-fencing design and performance standards, the industry and the FAA lack the data necessary to assess the accuracy and reliability of geo-fencing equipment and therefore, the FAA cannot promulgate geo-fencing equipment design requirements (*i.e.*, airworthiness certification).

Also, geo-fencing equipment integrated on small UAS would require an evolving database of terrain and obstacle updates, restricted and special use airspace, Notices to Airmen (NOTAMs), and Temporary Flight Restrictions (TFRs). The FAA is unaware of a database that provides this full capability and therefore cannot accurately determine the effort to develop and maintain it for remote pilots. The FAA also does not have information on how frequently updates to the onboard small UAS geo-fence database would be required to maintain safe and reliable operation in the NAS.

In addition, any geo-fencing equipment required under part 107 would also need to include an override feature to allow the remote pilot to enter the airspace if he or she receives permission from Air Traffic Control or an appropriate controlling agency. Additionally, as discussed in section III.E.1.d of this preamble, this rule will allow the remote pilot to deviate from the operational restrictions of part 107 if doing so is necessary to respond to an emergency situation. Thus, an override feature may also be necessary to allow a remote pilot to respond to emergencies. A geo-fencing system without an override function that prevents the human pilot from exercising this deviation authority may impair the pilot's ability to safely respond to an emergency situation.

If these technical obstacles are overcome, a mandatory geo-fencing system may provide a marginal increase to safety by forcibly keeping small unmanned aircraft out of certain airspace in which the aircraft may pose a higher risk to manned-aircraft operations. However, under Executive Order 12866, the FAA can adopt a regulation "only upon a reasoned determination that the benefits of the intended regulation justify its costs."[104] Here, the FAA has no data that would allow it to quantify the benefits of a possible safety increase associated with a mandatory geo-fencing system. Conversely, a mandatory geo-fencing requirement would substantially increase the costs of this rule. If mandated, there would be a cost for developing the minimum performance standards for this equipment. Once the standards are developed, the cost to owners for retrofitting previously purchased small UAS would be realized. If it is not possible to retrofit a small UAS to include geo-fencing, a replacement cost would be incurred. Additionally, an incremental per unit cost to small UAS manufacturers for installing mandated geo-fencing on newly built small UAS would be incurred.

Once geo-fencing is installed, the on-board avionics would rely upon a database of restricted airspace, NOTAMs, TFRs, obstacles, and terrain upon which to remain current. Maintaining these databases would incur additional costs, based on the frequency of database updates and the value of the time for the individual performing the task. Finally, small UAS owners would have recurring costs for subscribing to the database supplier or app developer for updates to regulatory airspace. To sum up, mandating geo-fencing equipage would result in substantial costs and, at this time, the FAA does not have sufficient data to determine, consistent with its obligations under Executive Order 12866 and 13563, whether the benefits associated with such a mandate would justify those costs.

The FAA appreciates the commenters' information and support for geo-fencing technology, and the agency will use this information in follow-on UAS-related activities. However, based on the considerations outlined above, the FAA has decided not to add any geo-fencing equipment requirements in this rule.

Commenters including the Association of American Universities, Association of Public Land-grant Universities, and NAMIC generally stated that geo-fencing technologies should be considered to allow small UAS operation beyond visual line of sight. The Association of American Universities and Association of Public and Land-grant Universities stated that this final rule should require "performance-based standards for the capabilities of a UAS authorized to conduct [beyond-visual-line-of-sight] operations" and noting "dual auto pilot modes, anti-collision systems employing SONAR, LIDAR," and "geo-fencing capabilities" as possible means of compliance. NAMIC cited benefits of beyond-line-of-sight UAS operations following a catastrophic disaster. The Colorado Cattlemen's Association and the Rocky Mountain Farmers Union supported rules that "allow for the use of such technologies to expand the permissible operating area for UAS in appropriate circumstances" and "permit the use of these technologies." The Interstate Natural Gas Association of America suggested geo-fencing technology, "programmed into a UAS that establishes defined controlled zone such as a pipeline corridor, combined with location, altitude and forward looking camera" to provide an equivalent level of safety to the proposed line of sight requirement.

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[104] Executive Order 12866, § 1(b)(6).

The National Ski Areas Association acknowledged that collision detection and avoidance systems are in development; however, the commenter stated that FAA "needs to recognize and accommodate these technological innovations, especially when the risk to manned aircraft and public safety is so minimal, as it is at ski areas."

An individual asserted that multi-rotor helicopter small UAS have equipment providing "geo-fencing to prevent loss of control link—or even to prevent airspace incursions and accidental 'fly-aways'." Another individual stated that "[s]everal technologies have been available for the last four years that enable pre-programmed GPS guided flight paths using latitude and longitude coordinates." Qualcomm added that geo-fencing "can ensure small UAS remain well outside of airspace that is off limits to UAS."

As discussed in other parts of this preamble, the two operational restrictions of interest to these commenters (the requirement to remain within visual line of sight and the restriction on flying over people) are both waivable upon demonstration that the proposed operation can safely be conducted under the terms of a certificate of waiver. Waiver applicants may use geo-fencing and other technological equipage to help demonstrate, in support of a waiver application, that the proposed operation can be conducted safely. Alternatively, applicants may be able to demonstrate the safety of their proposed operation through non-technological means, such as mitigations present in the area of operation. The FAA will evaluate the technological and non-technological means employed by a waiver applicant to mitigate the risk of a small UAS operation and will issue a waiver if the applicant demonstrates that his or her specific means establishes the requisite level of safety.

2. Flight Termination System

The FAA initially considered requiring a flight termination system (FTS), which is a system that terminates the flight of a small UAS in the event that all other contingencies have been exhausted and further flight of the aircraft cannot be safely achieved, or other potential hazards exist that require immediate discontinuation of flight. However, the FAA determined that there are other viable alternatives that can achieve this goal without requiring an FTS.

The NPRM invited comments as to the costs and benefits of requiring an FTS. After reviewing comments, the FAA has decided against requiring small UAS to include an FTS.

Several commenters, including the Small UAV Coalition, the University of Arkansas Division of Agriculture, and Northrop Grumman, agreed with the NPRM that use of an FTS should not be mandatory. Southern Company stated that alternative operational measures would adequately mitigate loss of control risk. Two individuals argued that flight termination systems are too heavy for small UAS. The Oklahoma Governor's Unmanned Aerial Systems Council commented that automatic termination of flight could have significant unintended consequences for the safety of people and property on the ground. NetMoby agreed that flight termination systems are not necessary, but encouraged the FAA to require return-to-home capabilities in UAS. Predesa also agreed that flight termination systems should not be required for small UAS, but asserted that GPS-based flight termination systems could mitigate risk. Planehook Aviation argued that the use of flight termination systems should be the operator's decision.

On the other hand, some commenters, including ALPA and EAA, among others, said the FAA should require small UAS to have flight termination systems. Texas A&M University-Corpus Christi/LSUASC and TTD said that a UAS without a flight termination system is dangerous to other users of the NAS if positive control is lost. The Professional Helicopter Pilots Association commented that this technology is already being included in most devices above the hobby level. NAAA said most of these technologies are software-based and utilize GPS systems already onboard the UAS and thus have no effect on the weight of the aircraft. Modovolate Aviation said the FAA should encourage small UAS stakeholders to develop performance standards for flight termination systems and require manufacturers to certify they have designed and manufactured their vehicles in accordance with these standards.

The Aviation Division of the Washington State Department of Transportation, the Nez Perce Tribe and UPS generally felt that an FTS could be optional equipage but stopped short of supporting a mandate. One individual stated ". . . that if loss of control does occur, it can be easily mitigated by GPS based 'return to home' systems which take control of the craft and automatically fly it back to its launch point. The most widely available consumer quadcopter, the DJI Phantom 2, comes standard with this capability out of the box, and many hobbyists and commercial operators who build their own craft also install similar systems, which can be obtained for less than $100."

The NPRM mitigated the potential risk associated with UAS flight primarily through operational restrictions rather than airworthiness certification and equipage requirements, such as the installation of an FTS. If installed, an FTS may mitigate the risk associated with loss of positive control by having the unmanned aircraft execute intentional flight into terrain if the link between the remote pilot and the unmanned aircraft is severed. However, mandating equipage such as FTS would increase the costs of complying with this rule to address a safety risk that may be mitigated through low-cost operational parameters.

Instead of requiring an FTS, the NPRM proposed to mitigate the risk associated with loss of positive control using the concept of a confined area of operation. Under the NPRM, the remote pilot would, prior to flight, be required to become familiar with the area of operation and to create contingency plans in that operations area to mitigate the risk associated with possible loss of positive control to people on the ground or other aircraft.

The NPRM proposal is a less costly method to address loss-of-positive-control risk because it does not require equipage (such as FTS, "return home," or geo-fencing systems) or airworthiness certification. If FTS were to be required, that would be an equipage requirement that would likely increase the costs of this rule. In addition, an FTS equipage requirement would likely have to be accompanied by some type of airworthiness certification requirement to ensure that the FTS works reliably. This also would increase the costs of this rule.

Conversely, it is unclear whether an FTS would provide a safety increase justifying the increase in costs for two reasons. First, the operational restrictions of this rule would significantly confine the area of operation of a small UAS, thus mitigating the loss-of-positive control risk through operational parameters. Second, an FTS could be potentially unsafe because using it would immediately terminate the flight with the possibility of placing people below in harm's way, especially if the FTS is programmed to automatically activate sometime after the control link is lost and cannot be re-established. For these reasons, the FAA will not require FTS on small unmanned aircraft in this rule.

3. Other Technological Equipage

A number of commenters suggested additional equipage requirements for small UAS operations. However, because small UAS operations subject to this rule pose a lower level of risk, there are operational alternatives available to mitigate their risk to an acceptable level without imposing an FAA requirement for technological equipage. Additionally, the FAA recognizes that the use of new and advanced technology applications on UAS has not been tested and there is not enough data to support regulatory requirements of technological equipage. Therefore, this rule will not mandate the use of any kind of technological equipage or device.

Modovolate Aviation recommended a general process for developing and integrating equipage requirements for small UAS. The commenter said it is important that the FAA "avoid anything resembling airworthiness and type certification for manned aircraft," and instead "adapt the consensus standard approach used in the early days of occupational health and safety regulation and combine it with the performance standards approach used by the Federal Communications Commission for unlicensed wireless devices." Modovolate Aviation explained that the FAA should encourage small UAS organizations to articulate performance standards for control technologies, and then manufacturers would certify that they have designed and manufactured their UAS in accordance with these consensus standards. The operating rules would require operators to confirm, as part of their pre-flight inspection, that these basic features are present and operating properly, and any manufacturers that falsely certify compliance with the standards would be subject to civil penalties and criminal prosecution for mail or wire fraud.

As discussed in section III.J.3 of this preamble, the FAA has determined that airworthiness certification for small UAS operating within the limits set by part 107 is unnecessary. However, as noted by the commenter, the FAA encourages industry organizations to set voluntary standards for small UAS to further develop the industry. Such standards, however, would not relieve the remote pilot in command of his or her pre-flight responsibilities to determine that the system is in a condition for safe operation under §§ 107.15 and 107.49. That is because the remote pilot in command must ensure that the small UAS is in a condition for safe operation for each flight, which requires greater diligence as the small UAS ages.

A number of commenters addressed the NPRM's statement that "existing technology does not appear to provide a way to resolve the 'see and avoid' problem with small UAS operations without maintaining human visual contact with the small unmanned aircraft during flight." CropLife America and Responsible Industry for a Sound Environment, commenting jointly, and the Professional Helicopter Pilots Association agreed with FAA that no see-and-avoid technology currently exists, but nevertheless said such technology should be required once it does become available. The United States Ultralight Association said UAS equipment should be designed with software or firmware that prevents the UAS from being flown further than one mile from the operator. The association asserted that "[d]epth perception fails well before that distance and one mile should be seen as the outside limit for safety."

The FAA recognizes that the use of software or firmware that prevents the UAS from being flown further than one mile could potentially help to prevent the small unmanned aircraft from flying out of the area of operation. This type of software and firmware could also potentially help to prevent injury or damage to those on the ground. However, as discussed in section III.E.1.d of this preamble, the remote pilot in command may need to deviate from the regulations of part 107 to respond to an emergency. A technological limitation on the small unmanned aircraft traveling more than one mile from the remote pilot could limit the remote pilot's ability to respond to an emergency situation that requires quickly moving the small unmanned aircraft farther away from the remote pilot.

Several commenters addressed the issue of compliance with the proposed maximum altitude and speed restrictions. PlaneSense and Cobolt Air, commenting jointly, wondered why manned aircraft are required to be equipped with an altimeter or an altitude limiting program or device, but unmanned aircraft are not.

The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative noted that, absent altimetry technology (such as altimeters or GPS), altitude would need to be estimated from the ground, and ground-based estimates are generally inaccurate and may cause significant noncompliance and safety challenges. As such, the organization recommended the final rule either require the use of a "practical and effective technique" for small UAS operators to estimate altitude "with sufficient accuracy," or require the use of altimetric technology. The U.S. Hang Gliding and Paragliding Association said a "simple barometric system set at launch would likely suffice" to keep small UAS in compliance with maximum altitude restrictions. An individual also said UAS should be equipped with "devices that provide the operator with telemetry data such as (but not limited to) height, speed, distance, bearing and battery level."

Virginia Commonwealth University Honors Students asserted that GPS systems could be used to ensure compliance with both altitude and speed restrictions for small UAS equipped with minimum equipment, such as an altimeter and magnetic direction indicator, to ensure the UAS remains below a specific altitude and within a certain radius from the operator's location, in compliance with ATC instructions. Several individuals said that FAA should require UAS to be equipped with technology that limits operations to below a certain altitude or within a certain airspace. Another individual suggested the requirement of technology to enable automated communication between a UAS and an FAA computer that can authorize flight in a particular area at a specific time.

As discussed in section III.E.3.a.ii of this preamble, while 400 feet AGL is generally the maximum altitude for a small unmanned aircraft, there is an exception to that requirement. Specifically, this rule allows a small unmanned aircraft flying within 400 feet of a building to fly higher than 400 feet AGL. As such, a technological component limiting aircraft altitude to 400 feet AGL would disallow some small UAS operations that are permitted by part 107. In addition, a categorical technological limitation on altitude would limit the remote pilot's ability to respond to an emergency. With regard to estimating altitude, section III.E.3.a.ii provides examples of other methods that a remote pilot in command can use to estimate the altitude of a small unmanned aircraft.

The NJIT Working Group recommended the use of "a heads up display of flight information such as airspeed, vertical speed, attitude, heading and power" to help the remote pilot fly according to actual flight parameters instead by sight.

The FAA supports the NJIT Working Group's efforts to provide remote pilots with an optimized method of displaying telemetry data of the aircraft. However, a regulatory requirement for a heads up display is unnecessary in this rule due to the limited nature of small UAS operations, and for many aircraft, the lack of telemetry data to display to the remote pilot.

A number of commenters addressed a requirement for return-to-home capabilities. Virginia Commonwealth University Honors Students said the FAA should require UAS to be equipped with a GPS system that automatically returns the UAS to home in adverse weather conditions. Those students and NetMoby also said UAS should be equipped with technology that returns the UAS to home when battery life is low.

NetMoby also recommended UAS be equipped with return-to-home capability "which, when automatically activated, as a result of loss of positive UAS control, puts the aircraft on a course to a waypoint that is mandated to be programmed into the UAS circuit board Random Access Memory ("RAM") prior to departure from the ground." The company further recommended the following to mitigate the risk associate with loss of positive control of a UAS: (1) UAS be equipped with GPS capable of position refresh rates of 5 seconds or better; and (2) GPS be accompanied with WAAS differential for greater position accuracy.

The Small UAV Coalition asserted that technological capabilities such as return-to-base and geo-fencing programming are currently being used by small UAS operators in other countries, and that such technologies "achieve and surpass the level of safety attained by a pilot's control of aircraft."

Airware acknowledged that detailed airworthiness requirements are not needed "for the very low risk environment proposed by this NPRM," but that "minimal protections" should nevertheless be required. One such requirement cited by the company is a flight control system that allows for certain contingency events to be monitored (*e.g.,* lost RC link, lost data link, low voltage), and for an appropriate response to be executed should any such events occur (*e.g.,* land now, return to home and land, return to home, loiter and land). Airware said such programmable contingency actions "are critical, as flight systems which just simply execute a return home and land procedure for example, may send the aircraft on a course that intersects with a structure or other obstacle."

Section 107.19 requires the remote pilot in command to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of positive control of the aircraft for any reason. In consideration of the numerous ways that a remote pilot may mitigate the risk associated with a contingency event, the FAA considers it unnecessary to enact a prescriptive requirement such as a return-to-home function, as many other methods may exist now and in the future to ensure no undue hazard due to a loss of control. For example, non-equipage mitigations for loss of control may include utilizing physical barriers such as trees or netting, utilizing security/safety personnel to control non-participant entry into the operating area, or ensuring non-participants are under/in a protected covering.

The AIT Austrian Institute of Technology GmbH said that a data link requirement is essential for safe operations, and that "adequate Frequencies and Standards should be put in place to support the growing market potentials." The Institute went on to recommend specific data link spectrum requirements for both visual-line-of-sight and beyond-line-of-sight operations.

Frequency spectrum requirements are outside the scope of this rule. The comment has been forwarded to the FAA Spectrum Engineering service unit for future consideration.

Several individuals said small UAS should be equipped with flight data recording systems or "black boxes" so that operators can be held accountable for infractions. One individual said that, for those aircraft that can record flight log data, there should be a requirement to preserve that data in the event of an operation that causes injury or property damage. The commenter further suggested that, in case of airspace violations, the FAA consider requiring all such flight logs be kept for some predetermined period of time.

Due to the mitigations provided by part 107 that reduce the likelihood of a small UAS flight resulting in significant injury or property damage, a requirement to equip small unmanned aircraft with flight data recorders would be unnecessarily burdensome.

Transport Canada questioned whether, "[g]iven the potential interference caused by radios, cell phones, electronic devices, etc.," the FAA has considered a prohibition against using personal electronic devices at, or in the vicinity of, a control station.

Prior to flight, the remote pilot in command must, pursuant to § 107.49(c), ensure that all control links between the ground control station and the small unmanned aircraft are functioning properly. If an electronic device is being used nearby and that electronic device affects the control link such that it is not functioning properly, the remote pilot in command may not commence the operation until the problem with the control link has been resolved. The FAA expects that the remote pilot will resolve this problem by either: (1) Terminating the use of any electronic devices that are known to the remote pilot to cause interference with operation of the UAS; or (2) delaying the operation until use of the interfering electronic device has ceased. It would not be practical to enact a prohibition on the use of personal electronic devices because such devices are routinely used to control or monitor small UAS.

The City of Phoenix Aviation Department said the FAA should require "7460 applications" from small UAS because "there are unknown impacts of UAS remote frequency system[s] interacting with commercial airport operations."

The FAA disagrees. FAA Form 7460, *Notice of Proposed Construction or Alteration,* applies to persons constructing structures greater than 200 feet AGL, or within a specific distance of an existing airport or heliport. Because the form does not apply to aircraft operations, there is no requirement for small UAS remote pilots to submit a 7460 application.

4. External Load and Dropping Objects

In the NPRM, the FAA proposed to not allow external load and towing operations under part 107. The FAA also proposed to prohibit objects from being dropped from an aircraft in flight if doing so would endanger the life or property of another. For the reasons discussed below, this rule will allow external load and towing operations as long as the object that is attached to or carried by the small unmanned aircraft is secure and does not adversely affect the flight characteristics or controllability of the aircraft. This rule will also maintain the prohibition on dropping objects from a small unmanned aircraft if doing so would create a hazard to persons or property, but will rephrase the regulatory text of § 107.23(b) to make it similar to the "undue hazard" standard used in § 107.19(b). Additionally, as discussed in section III.C.1 of this preamble, this rule will also allow the intrastate transportation of property for compensation or hire.

a. External Load and Towing

In the NPRM, the FAA noted that external load and towing operations "involve greater levels of public risk due to the dynamic nature of external-load configurations and inherent risks associated with the flight characteristics of a load that is carried or extends outside of the aircraft fuselage and may be jettisonable."[105] The FAA added that these types of operations may "also involve evaluation of the aircraft frame for safety performance impacts, which may require airworthiness certification."[106] Accordingly, the NPRM would not have permitted external load or towing operations to be conducted under part 107. However, the FAA invited comment on whether external-load and towing UAS operations should be permitted, whether they should require airworthiness certification, whether they should require higher levels of airman certification, whether they should require additional operational limitations, and on other relevant issues.

Several commenters, including Cherokee Nation Technologies, NAAA, and ALPA, generally supported the proposed prohibition on conducting external load and towing operations. Cherokee Nation Technologies contended that the risks associated with external loads and towing are beyond the scope of this rulemaking effort. NAAA argued that additional data is needed to safely allow external load small UAS operations in the NAS. ALPA asserted that external load and towing operations require a level of piloting skill that is higher than the one envisioned by part 107.

Approximately 30 other commenters opposed a blanket prohibition on conducting external load and towing operations. Modovolate Aviation stated that the NPRM does not explain sufficiently why external load and banner-towing operations should be excluded. DJI asserted that external load and towing operations could be conducted safely within the other operating parameters proposed in the NPRM. DJI specifically noted that the 55-pound limit on the total weight of the small unmanned aircraft would significantly reduce the risk of cargo-carriage operations by limiting the weight of the cargo that could be carried or towed by the unmanned aircraft.

Yale University, the Information Technology and Innovation Foundation, American Farm Bureau Federation, and Google stated that the proposed prohibition on external load and towing operations would offer only marginal improvements in safety, if any, at the cost of important research and a wide range of useful applications of small UAS. American Farm Bureau Federation, the Michigan Farm Bureau, and the Missouri Farm Bureau specifically noted that the prohibition is overbroad and impractical as applied to agricultural applications. Short of recommending that the FAA completely eliminate the external load and towing prohibition, the American Farm Bureau Federation and the Michigan Farm Bureau urged the FAA to clarify that this prohibition only applies to actual towing operations or operations that would cause the weight of the UAS to exceed 55 pounds. The Oklahoma Governor's Unmanned Aerial Systems Council said that if a small UAS is specifically designed to safely accommodate external loads and towing operations, then these operations should be allowed as long as they are in compliance with the manufacturers' engineering and operating specifications.

The Mercatus Center at George Mason University stated that the NPRM fails to include a discussion of the benefits of allowing small UAS to conduct external load operations. The commenter asserted that, given that no fatalities have been reported due to "jettisoned parcels from UASs," parcel-for-parcel, it may be safer to transport goods via UAS external load operations than to do so using delivery trucks. The Colorado Cattlemen's Association and Amazon argued that the FAA should take a performance-based approach to allow external load and towing operations. AIA similarly recommended the FAA apply "risk analysis techniques" to the specific operations under consideration.

The University of California and the Consumer Electronics Association stated that, instead of a blanket prohibition on external load and towing operations, safety concerns could be mitigated by sensible limits on weight, range, location and altitude, and by technology and a registration procedure that certifies to a higher degree of safety. By way of example, the Consumer Electronics Association pointed out that Amazon has said that a 5-pound package limit would create minimal safety concerns, yet would still permit the delivery of more than 85 percent of the products it sells.

Google and several individual commenters cited numerous examples of small unmanned aircraft missions that would be adversely affected by a prohibition on external loads and towing. These operations include activities such as banner towing, magnetometer missions, towing lines for electric utility industry, and delivery of tools and equipment. A few commenters opposed the prohibition on external load and towing operations in limited contexts. The National Ski Areas Association said the prohibition should be relaxed for safety and emergency operations. The Associated General Contractors of America said that the FAA should invite further comment on whether the prohibition should extend to highly controlled construction jobsites. Aviation Management stated that FAA should be able to effectively assess the risk of towing operations on a class basis or a case-by-case basis. One commenter suggested that external loads of a limited weight should be allowed, and that the weight allowed should be a specified percentage of the weight of the unmanned aircraft.

The FAA agrees with the commenters who objected to the proposed prohibition on external load and towing operations. Under part 107, the combined weight of the small unmanned aircraft and any objects towed or loaded (either externally or internally) must be less than 55 pounds. As a result of this limitation, the risk posed by a small unmanned aircraft conducting external load or towing operations is significantly lower than the risk associated with manned-aircraft external load or towing operations, which can carry 1,000 to 50,000 pounds of cargo.

Further, the majority of risks associated with load (either internal or external) and towing operations are already mitigated by the other provisions of this rule. First, § 107.19(c) requires the remote pilot in command to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason. Second, § 107.49(a) requires the remote pilot in command to conduct a preflight assessment of the operating environment, and consider the potential risks to persons and property in the immediate vicinity. Finally, as discussed below, § 107.23(b) prohibits a person from dropping an object from a small unmanned aircraft in a manner that creates an undue hazard to persons or property.

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[105] 80 FR at 9553.

[106] *Id.*

Because the other provisions of this rule mitigate the risks associated with external load and towing operations, these operations will be permitted under part 107 if they do not adversely affect the flight characteristics and controllability of the small unmanned aircraft. To ensure that this is the case, the FAA has revised § 107.49 to require that, prior to flight, the remote pilot in command and the person manipulating the flight controls of the small UAS must ensure that any object attached to or carried by the small unmanned aircraft (either internally or externally) is secured and does not adversely affect the flight characteristics or controllability of the aircraft.

Flight characteristics refer to the stability of the small UAS, while controllability refers to the maneuverability of the small UAS. To satisfy the above requirement, the remote pilot in command must examine the equipment used for lifting or securing a payload to ensure that it is in good condition, strong enough for the task, and attached in a manner such that there is no unintended shifting or detaching of the payload. For example, if a single cable is used to secure and lift a payload, the cable must be inspected to determine that it is securely attached at both ends and that the cable and attach points are in good condition so that the payload will not inadvertently detach. If netting is used, the netting and the attach points must be in good condition so that the netting does not inadvertently become detached. The payload must also be securely fastened so that it does not slip out of the netting during flight.

A payload will likely adversely affect the flight characteristics of the small unmanned aircraft if that payload shifts in a manner that causes the small unmanned aircraft to deviate from its intended flight path or become uncontrollable. In other words, if a payload becomes partially detached or if the presence of the payload creates an imbalanced small unmanned aircraft, then the flight characteristics of the small unmanned aircraft have been adversely affected. Additionally, if a payload shifts during flight or weighs down a small unmanned aircraft such that the aircraft is unable to properly respond to a remote pilot's controls, then the controllability of the small unmanned aircraft has been adversely affected.

A joint submission from the State of Nevada, the Nevada Institute for Autonomous Systems, and the Nevada FAA-designated UAS Test Site, and a comment from an individual claimed that external load and towing operations involve a greater level of complexity and safety risk and that the FAA should develop appropriate standards and certification criteria for these operations. Conversely, Yale University said that a prohibition on all external-load operations or requiring an airworthiness certificate for such operations would impede ability to rapidly prototype aircraft. The Oklahoma Governor's Unmanned Aerial Systems Council recommended airworthiness certification only for larger UAS platforms conducting external load operations.

Planehook Aviation said that the FAA should create a special category of common carrier certification for conducting external load operations. The commenter recommended that FAA create a UAS-specific advisory circular to mirror manned aviation guidance in AC 133–1A, Rotorcraft External Load Operations in accordance with 14 CFR part 133.

Separate airworthiness or other certification analogous to manned-aircraft operations is not necessary for external load and towing operations that will be conducted under part 107. As discussed earlier, a small unmanned aircraft weighing less than 55 pounds (including the weight of any payload) does not pose the same safety risk as a 1,000 to 50,000-pound manned aircraft. Thus, it is not necessary for a small unmanned aircraft to be subject to the same regulatory provisions as a manned aircraft that conducts external-load operations.

Consequently, this rule will not require small unmanned aircraft operating under part 107 to comply with either the provisions of part 133 (which normally applies to rotorcraft external load operations) or current guidance associated with airplane external load operations. However, because larger UAS than the ones governed by this rule may pose additional safety risk, future rulemakings may impose additional mitigations, such as those required by part 133, on larger UAS operations. While the FAA does not plan to issue guidance on external load operations with larger UAS in conjunction with this rulemaking, it may do so in the future.

DJI recommended that instead of banning towing operations, the FAA use existing language from § 91.15, which prohibits dropping objects from aircraft in flight "that creates a hazard to persons or property." One individual commenter said the FAA should consider a restriction on the size of a towed banner, and that the device should meet requirements similar to the requirement for 14 CFR part 101 (balloons). Another individual commenter said towing operations should be permitted as long as the power-to-weight/drag ratio is appropriate for safe flight. In response, the FAA notes that, as discussed earlier, this rule will allow external load and towing operations (including banner towing) as long as the object is securely attached to the small unmanned aircraft and does not pose adverse flight characteristics.

Several commenters, including the Small UAV Coalition, the North Carolina Association of Broadcasters, and Modovolate Aviation stated the FAA needs to clarify whether a gimbal, camera, or sensor affixed to a UAS is considered an external load. The News Media Coalition stated that the final rule should make clear that an interchangeable camera that is affixed to or carried by a small UAS to be used by that UAS is permissible. SkyBridge Holdings said that any item that is clearly, mechanically fastened to the aircraft (*e.g.,* using screws or bolts) should not be considered an external load.

The FAA acknowledges the concerns raised by the commenters, but as discussed earlier, this rule will remove the proposed prohibition on external-load operations. Consequently, part 107 will not have any external-load-specific regulatory provisions and, as such, a UAS-specific definition of external load is unnecessary in this rule. The FAA also emphasizes the requirements (discussed earlier) that any object attached to or carried on or in the small unmanned aircraft must be secured and may not pose adverse flight characteristics. These requirements apply regardless of whether the object is carried inside or outside of the aircraft.

Southern Company sought clarification as to whether the proposed external-load and towing prohibition would apply to tethered operations (*e.g.,* the stringing of a conductor, the rigging of climbing protection, or the carriage of any line or cable that is tied to the ground or held by a person). If tethered operations are permitted, the commenter asked whether the weight of the tether counts toward the small UAS weight limitation. Southern Company stated that a tether provides sufficient risk mitigation such that it should not be considered part of the aircraft for the purpose of determining weight.

As discussed in section III.D.4 of this preamble, the weight of the small unmanned aircraft includes everything that is on board or otherwise attached to the aircraft and may be lifted. Thus, if a cable is attached to an unmanned aircraft, then the weight of the entire cable must be added to the weight of the unmanned aircraft to determine whether the total weight is under the 55-pound limit imposed on small unmanned aircraft. The FAA acknowledges that a portion of the attached cable may rest on the ground during the small UAS operation, but the small unmanned aircraft may end up lifting the entire cable if positive control is lost during the operation. If the unmanned aircraft is tethered by the cable in such a way that the cable, securely attached to an immoveable object, prevents the unmanned aircraft from flying away in the event of loss of positive control, only the portion of the cable which may be lifted aloft by the small unmanned aircraft must be added to the weight of the unmanned aircraft when determining total weight.

Transport Canada asked whether the FAA has considered prohibiting certain payloads (*e.g.*, explosives, corrosives, bio-hazards, lasers, weapons). Transport Canada added that the FAA might consider a prohibition on equipping small UAS with an emergency locator transmitter (ELT), "and the potential response of search and rescue assets as a result of an ELT activation."

As discussed in section III.C.1 of this preamble, this rule will not allow the carriage of hazardous materials. With regard to ELTs, an ELT is generally required to be installed in manned aircraft under 14 CFR 91.207 for the purpose of locating a downed aircraft and aiding in the rescue of survivors. Because a small unmanned aircraft will not carry any people onboard, the installation of an ELT would not result in significant safety benefits and will not be required by this rule. Further, due to the cost and weight of ELT devices, we do not anticipate small UAS owners voluntarily equipping their aircraft with ELTs.

b. Dropping Objects

In § 107.23(b) of the proposed rule, the FAA proposed to prohibit an object from being dropped from a small unmanned aircraft if such action endangers the life or property of another. The FAA received approximately 15 comments in response to this proposed provision.

CAPA and one individual commenter expressed concern about the proliferation of small UAS and their accessibility to persons with limited or no aviation experience. Both commenters asserted that it requires great skill to drop an object safely from an aircraft. CAPA also expressed concerns about the potential security risks of permitting objects to be dropped from small unmanned aircraft. Similarly, two individual commenters worried that small unmanned aircraft equipped for package delivery could be used to carry out terrorist activities, such as dropping canisters of poisonous gases into populated areas such as shopping malls.

The FAA disagrees with the commenters that airmen operating under part 107 will lack the skill necessary to safely drop an object from a small UAS. As discussed in section III.E.1 of this preamble, all small UAS operations must be conducted either by a certificated remote pilot or under the direct supervision of a certificated remote pilot in command. In order to obtain a remote pilot certificate under part 107, an applicant will be required to demonstrate his or her knowledge of how to safely operate a small UAS under part 107.[107] Thus, operations under part 107 will be conducted and overseen by certificated airmen who will have the knowledge necessary to safely conduct various part 107 operations, including safely dropping objects from a small UAS.

With regard to dropping dangerous objects, the FAA notes that, as discussed in section III.C.1 of this preamble, this rule will prohibit the carriage of hazardous material by small unmanned aircraft. With regard to terrorism and criminal activities more broadly, as discussed in section III.J.2 of this preamble, there already exist criminal statutes that prohibit criminal and terrorist activities.

Five commenters suggested that the language in the final rule regarding the dropping of objects should mirror the language in 14 CFR 91.15. These commenters suggested that while proposed § 107.23(b) does not necessarily differ in substance from § 91.15, it should be made explicit that the rule does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property. DJI suggested that the FAA adopt the "hazard to persons or property" standard used in § 91.15 for external load and towing operations.

Section 91.15 prohibits an object from being dropped from an aircraft in flight in a manner that creates a hazard to persons or property. Section 107.19(b) of this rule uses a similar standard of "undue hazard" with regard to loss of positive control of a small unmanned aircraft. In order to promote regulatory consistency throughout part 107, the FAA has rephrased the regulatory text of § 107.23(b) to use the "undue hazard" standard specified in § 107.19(b). The revised § 107.23(b) will prohibit dropping objects from a small unmanned aircraft in a manner that creates an undue hazard to persons or property.

DJI noted that the term "hazard" is inherently subjective. DJI acknowledged that "it may be impossible to adopt a non-subjective standard," and requested that the FAA provide guidance on the types of operations that the FAA would consider to be hazardous.

As discussed earlier, § 107.23(b) will prohibit dropping an object from a small unmanned aircraft in a manner that creates an undue hazard to persons or property. For purposes of this rule, a falling object creates an undue hazard to persons or property if it poses a risk of injury to a person or a risk of damage to property. This standard will be applied on a fact-specific basis. For example, a small unmanned aircraft that drops a heavy or sharp object capable of injuring a person in an area where there are people who could be hit by that object would likely create an undue hazard to persons. The remote pilot in command of the operation could take reasonable precautions prior to flight by moving people away from the drop site to a distance where they would not be hit by a falling object if something goes wrong with the operation. Guidance associated with the enactment of part 107 will provide additional examples to help remote pilots comply with § 107.23(b).

5. Limitations on Operations in Certain Airspace

In the NPRM, the FAA proposed limiting the exposure of small unmanned aircraft to other users of the NAS by restricting small UAS operations in controlled airspace. In addition, the NPRM proposed prohibiting small UAS operations in prohibited and restricted areas without permission from the using or controlling agency. The proposed rule also prohibited operation of small UAS in airspace restricted by NOTAMs unless authorized by ATC or a certificate of waiver or authorization.

For the reasons discussed below, this rule will adopt the provisions for operating in Class B through E airspace and in prohibited or restricted areas as proposed in the NPRM, but with the option to request a waiver from the provisions for operating in Class B through E airspace. This rule will not adopt the provisions for compliance with NOTAMs as proposed, but will instead require compliance with §§ 91.137 through 91.145 and § 99.7, as applicable. This rule will also not adopt the proposed prohibition on operations in Class A airspace because the other operational restrictions of this rule will keep a small unmanned aircraft from reaching Class A airspace. Lastly, this rule will add a prohibition against small unmanned aircraft operations that interfere with operations and traffic patterns at any airport, heliport or seaplane base.

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[107] Depending on whether the applicant holds a part 61 pilot certificate other than student pilot, that demonstration will take the form of either an aeronautical knowledge test or online training.

a. Operations in Class B, C, D, and Lateral Boundaries of the Surface Area of Class E Airspace Designated for an Airport

The NPRM proposed to require prior permission from Air Traffic Control (ATC) to operate in Class B, C, or D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport. The NPRM did not propose equipment requirements for small UAS operating in controlled airspace, nor did it propose to require small UAS to demonstrate strict compliance with part 91 in order to operate in controlled airspace.

Several commenters including AOPA, EAA, and the Small UAV Coalition, supported the FAA's proposal that remote pilots obtain ATC approval prior to operating small UAS in Class B, C, or D airspace, or within the lateral boundaries of the surface area of Class E airspace designated for an airport. Some commenters added that they would like clarification that ATC approval does not mean the FAA issuance of a COA. The International Air Transport Association supported the proposal and stated this requirement should not be allowed to impede ATC's primary responsibility to manage traffic. Transport Canada requested clarification on the process for requesting ATC approval. Foxtrot Consulting and JAM Aviation expressed concern about inconsistent application of the regulation by ATC facilities.

Some of these commenters requested that the FAA provide guidance to ATC facilities regarding the handling of requests to operate small UAS in controlled airspace. Modovolate Aviation agreed with the proposed framework, but suggested that the FAA should provide guidance on how ATC permission would be obtained. The Small UAV Coalition asked the FAA to provide contact information for each ATC facility, and to agree to provide timely decisions on whether to authorize operations in controlled airspace. NBAA suggested prohibiting use of ATC frequencies to obtain the required permission.

In response to comments, the FAA will establish two methods by which a remote pilot in command may request FAA authorization for a small unmanned aircraft to operate in Class B, C, D, and the lateral boundaries of the surface area of Class E airspace designated for an airport. The first method is the same as what was proposed in the NPRM: A remote pilot in command may seek approval from the ATC facility with jurisdiction over the airspace in which the remote pilot would like to conduct operations. The second method allows a remote pilot to request a waiver from this provision in order to operate in Class B through E airspace. As stated in the NPRM, the appropriate ATC facility has the best understanding of local airspace, its usage, and traffic patterns and is in the best position to ascertain whether the proposed small UAS operation would pose a hazard to other users or the efficiency of the airspace, and procedures to implement to mitigate such hazards. The ATC facility has the authority to approve or deny aircraft operations based on traffic density, controller workload, communications issues, or any other type of operational issues that could potentially impact the safe and efficient flow of air traffic in that airspace. If necessary to approve a small UAS operation, ATC may require mitigations such as altitude constraints and direct communication. ATC may deny requests that pose an unacceptable risk to the NAS and cannot be mitigated.

The ATC facility does not have the authority to approve or deny small UAS operations on the basis of equipage that exceeds the part 107 requirements. Because additional equipage and technologies such as geo-fencing have not been certificated by the FAA, they therefore need to be examined on a case-by-case basis in order for the FAA to determine their reliability and functionality. Additionally, requiring ATC to review equipage would place a burden on ATC and detract from other duties. Instead, a remote pilot who wishes to operate in controlled airspace because he or she can demonstrate mitigations through equipage may do so by applying for a waiver.

Requests for authorization to operate a UAS in one of the above areas should be made by writing or an electronic method as determined by the Administrator and publicized on the FAA's Web site. Requests for such authorization via air traffic control radio communication frequencies will not be accepted because they may interfere with the separation of aircraft.

The FAA is not committing to a timeline for approval after ATC permission has been requested because determining the level of review required for approval is dependent on the management at the individual facilities. The FAA also notes that the time required for approval will vary based on the resources available at the ATC facility and the complexity and safety issues raised by each specific request. The FAA encourages remote pilots who know that they will need to operate in Class B, C, D, or E airspace to contact the appropriate ATC facility as soon as possible prior to the operation.

While some UAS activity will still utilize a COA, operating under part 107 regulations will not require a COA where ATC permission is specified. The FAA is working concurrently on several other documents, including an advisory circular, and training and direction to ATC facilities that will provide guidance to users and ATC personnel as to procedures and responsibilities. This guidance will ensure consistent application of ATC permission and processes, to the extent practicable. The FAA notes that some discrepancies may arise due to the unique nature of different airspace.

Several commenters, including ALPA, TTD, and the University of North Dakota John D. Odegard School of Aerospace Sciences, opposed allowing operations in class B, C, D, or E airspace. The University of North Dakota John D. Odegard School of Aerospace Sciences argued that this provision would place an undue burden on ATC, and that the well-established COA process would be a better mechanism than ATC permission. TTD suggested that the FAA adopt design provisions that ensure small UAS remain in the intended airspace when operating optimally, as well as risk mitigation technology when command controls are lost, and that operations in controlled airspace be banned in the absence of such provisions. ALPA stated that it does not believe there is sufficient information on which to base a sound safety case for allowing small UAS into controlled airspace at this time. Several commenters including SWAPA, Airport Council International-North America and the County of Los Angeles Department of Public Works, thought a real-time two-way communication requirement should be included. The Property Drone Consortium opposed the requirement to notify ATC, while adding that it believed this requirement imposed burdens on UAS operators that are different from those imposed on manned operations.

The FAA does not believe that prescriptive design provisions are necessary in this rule. The FAA acknowledges the concerns raised by the commenters but notes that, as of this writing, safety-relevant equipage such as transponders has not been certificated for use on a small UAS. Additionally, there could be small UAS operations with operational parameters that would make those UAS not a danger to manned aircraft even if positive control is lost. For example, a small unmanned aircraft flying at low altitude and surrounded by natural barriers that would stop the aircraft from flying away would not pose a danger to other aircraft, even in the absence of equipage mitigations. Thus, this rule will retain the framework allowing the FAA to evaluate operations seeking to be conducted in controlled airspace on a case-by-case basis, and will not impose generally applicable design or equipage provisions on all small UAS operations. The FAA will continue to monitor the development of small UAS technology and may revisit this issue once the pertinent technology becomes more mature and additional safety data is available.

This framework is similar to the regulatory construct underlying controlled-airspace access under part 91. Specifically, while part 91 imposes minimum equipage requirements on aircraft seeking to operate in controlled airspace, part 91 also gives ATC the power to authorize aircraft that do not have the required equipage to access the airspace.[108] Part 107 provides ATC with a similar power to evaluate whether an individual small UAS operation may safely be conducted in controlled airspace even though the unmanned aircraft lacks equipage typically used to mitigate safety concerns in that airspace.

Additionally, the FAA does not agree that the current COA process would be a better mechanism for operating in controlled airspace. Currently, when a small UAS operator applies for a COA, the Flight Standards Service in the FAA first addresses the equipage exemptions, and then if a favorable outcome is reached, the operator is allowed to operate in Class G airspace up to 200 feet AGL. If an operator wishes to operate in controlled airspace, under the previous COA framework, the request is sent to the air traffic service center. The service center then works with the appropriate ATC facility to respond to the request. This rule will streamline the process, such that equipage no longer needs to be reviewed by the FAA if the part 107 requirements are met. Therefore, the only outstanding step in the COA process would be resolving requests to operate in controlled airspace. This rule incorporates that step within the ATC-permission framework, making the COA process unnecessary for part 107 operations.

Embry-Riddle Aeronautical University supported the proposed rule and proposed adding a filed flight plan option in lieu of explicit ATC approval. The City and County of Denver, Colorado, insisted that permission should be granted only for essential commercial, non-recreational purposes. Airport Council International–North America and the American Association of Airport Executives stated that ATC should only grant permission when there is a specific need to do so. The Center for Robot-Assisted Search and Rescue asked that public safety operators be exempt from the requirement to obtain ATC approval prior to operating in controlled airspace.

The FAA does not agree with Embry-Riddle's proposal to add a flight plan option in lieu of ATC approval. Filing a flight plan would not alert ATC in advance as to the nature of the operation, nor would it give them an opportunity to apply mitigations in a timely manner. The FAA also notes that the flight plan system is set up for point-to-point flights. Adapting it for small UAS operations would be a technology hurdle and would introduce unnecessary delay into the rule. Therefore, a flight plan is not a viable substitute for obtaining ATC permission.

Additionally, ATC should not be placed in the position of validating the need of any specific operation. Any decision on allowing an operation within the appropriate ATC facility's jurisdiction will take into account the workload of the controller. If it is anticipated the volume of traffic could change, the facility might require a means to terminate a small UAS operation in real-time, such as two-way radio or cell phone communication.

The FAA also notes that this rulemaking does not apply to recreational small UAS operations that are conducted in accordance with section 336 of Public Law 112–95. Further, the FAA does not agree that public safety operators should be exempt from the requirement to obtain ATC approval prior to operating in controlled airspace. Although public safety operators may have time-critical aspects to their operations, the risks associated with flying in controlled airspace remain the same regardless of the type of operation. The requirement for ATC approval gives ATC the opportunity to prescribe mitigations to address any risks associated with operating in controlled airspace. The FAA notes that while a public entity has the option to operate under a public COA, it may gain an operational advantage by operating under part 107. However, in electing to operate under part 107, a public entity is required to operate wholly under the part, and its operation would therefore be considered a civil operation.

Some commenters, including TTD and NAFI, expressed concern that the testing required by the proposed rule would not adequately prepare UAS operators to effectively communicate with ATC. The American Association of Airport Executives and the Associated General Contractors of America suggested that the FAA develop a protocol or guidance for UAS operators when communicating with ATC. NBAA asserted that if ATC requires two-way radio capability in their approval, the remote pilot should be required to hold at least a sport pilot airman certificate to ensure familiarity with ATC phraseology.

Transport Canada asked whether FAA considered mandating that the UAS operator develop and adhere to procedures for loss of positive control that include communications with air traffic control. Similarly, CAPA said that the FAA should require procedures for operators of small UAS to notify the appropriate ATC agency when the UAS operator has lost positive control.

This rule does not mandate a specific method of communication with ATC. In its evaluation of a request to fly in controlled airspace, an ATC facility may request two-way radio communications as a condition of approval for that request. ATC's evaluation may include assessing the experience and ability of the remote pilot in using proper phraseology. Imposing a general sport pilot certificate requirement would not ensure the appropriate knowledge and skills because sport pilots are not permitted to operate in class B, C, or D airspace without an additional endorsement, and would not necessarily have the radio training or experience by virtue of holding a sport pilot certificate. Additionally, there are several means outside of an airman certificate that may provide proper ATC communication experience, such as airport ground personnel or air traffic controller training.

The FAA has not mandated specific coordination with ATC for manned or unmanned aircraft during a loss-of-control event. As described in the introduction to the FAA Safety Team (FAAST) course ALC–40,[109] a common rubric used by pilots is aviate, navigate, communicate. In other words, during an emergency, a pilot should maintain control of the aircraft, know where he or she is and where he or she intends to go, and let someone know his or her plans. To require a communication task during an emergency may distract a pilot from these priorities and possibly create additional risk. Proper flight planning by a remote pilot in command includes an assessment of the risk of violating regulatory airspace, and incorporation of mitigations and contingencies commensurate with that risk.

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[108] *See, e.g.,* 14 CFR 91.215(b) (allowing ATC to authorize access to Class A, B, or C airspace for aircraft that do not have a transponder) and § 91.225(b) (allowing ATC to authorize access to Class B or C airspace for aircraft that do not have ADS–B).

Prioria Robotics said the FAA should consider blanket access to airspace below 500 feet for small and micro class unmanned vehicles of less than 15 pounds, with exceptions for within one mile of airports. Prioria Robotics also recommended that only vehicles larger than 15 pounds be subject to airspace restriction. One individual stated that operations below 100 feet and farther than 3 miles from an airport in class B and C airspace should be allowed without ATC involvement. Similarly, the National Association of Broadcasters, the National Cable & Telecommunications Association, and the Radio Television Digital News Association, commenting jointly, suggested a sliding scale for operations that would require lower altitudes when closer to an airport for operations without ATC approval. DJI suggested that in lieu of restrictions in certain classes of airspace, the FAA should consider adopting an approach akin to the one that the agency has adopted in 14 CFR part 77, in which maximum altitude increases as distance to an airport increases.

The FAA disagrees with the assumption that the weight of an unmanned aircraft is the sole safety concern when operating in controlled airspace. The FAA designates the various classes of controlled airspace to allow ATC to provide separation services to instrument flight rules (IFR) and, in the case of class B and C airspace, VFR traffic. Controlled airspace surface areas have a high number of arriving and departing aircraft at altitudes below 500 feet and rely on ATC to assess and mitigate the associated risk.

Trying to create a sliding scale that would require lower altitudes closer to an airport for operations without ATC approval would be complex because the slope would not be uniform. Instead, the slope would be shallower in the path of approach or departures, and steeper away from traffic flows. Each airspace has unique characteristics, and individual small UAS operations are different, making it impossible to establish a uniform standard. Allowing the local ATC facility to determine the feasibility of a small UAS operation is an efficient means to mitigate the risks involved in operating in controlled airspace.

The Colorado Agricultural Aviation Association, the City of Phoenix Aviation Department, and PlaneSense and Cobalt Air, commenting jointly, suggested that a NOTAM be issued when small UAS are flying in class B, C, D, and E airspace.

The FAA disagrees with this suggestion because, in many instances, a NOTAM would not provide any additional level of safety. For example, neither a very low altitude operation (*e.g.,* below 50 feet), nor a flight that is shielded by a taller structure that would preclude manned aircraft from operating in that area, would benefit from a NOTAM. In both instances there is a low probability that manned aircraft will be present in those areas. The FAA has a responsibility to keep NOTAMs relevant to pilots, and NOTAMs that do not provide an additional level of safety may create information "clutter" during a preflight briefing. A facility may issue a NOTAM for the impacted timeframe after giving permission to a remote pilot to operate in controlled airspace, if appropriate.

NOAA requested more details about requirements for civil UAS operated in the Mode C veil. In response, the FAA notes that operations conducted under part 107 do not need to comply with part 91 unless explicitly directed by part 107. The transponder requirement in the mode C veil (14 CFR part 91.215(b)(2)) is not required of part 107 operations.

NAFI asked what radio station license a small UAS operator would use on the aviation radio spectrum. In response, the FAA notes that licensing of radio stations is outside of its jurisdiction. The pertinent FCC guidance can be found in form 605 Schedule C (*https://transition.fcc.gov/Forms/Form605/605c.pdf*).

Several commenters, including the American Association of Airport Executives, the Hillsborough County Aviation Authority, and the Metropolitan Airports Commission, suggested that the FAA require remote pilots wishing to operate in class B, C, D, or E airspace to also notify the appropriate airport operator. The City and County of Denver, Colorado, and the City of Phoenix Aviation Department added that UAS operators should be required to seek authorization from both ATC and the airport operator at least two full business days prior to small UAS operations in controlled airspace.

An airport operator does not have responsibility for air traffic or activities outside airport property. The FAA has been tasked with integrating UAS operations into the NAS, and notes that manned aircraft do not have a corresponding requirement to notify airport management. The ATC facility is the proper focal point for approval and notification for small UAS operations in controlled airspace under this rule.

The FAA does not agree that remote pilots must seek permission from an ATC facility at least two full business days prior to the small UAS operations. As discussed previously, the timeframe for ATC to process permission requests will vary based on the ATC facility, the airspace, and the small UAS operation. In some instances it may take less than two full business days to process a permission request and, as such, a requirement to submit the permission request two days in advance would be unnecessarily burdensome.

The Professional Helicopter Pilots Association said operations in class B airspace should not be allowed without a transponder for operation above at least 200 feet AGL.

Because part 107 operations are constrained to visual line of sight, they are confined to a limited area known to ATC. Requiring a transponder in class B airspace for all operations over a certain altitude would place a burden on the small UAS operation that might not provide any additional safety because all manned traffic (except under certain SFRA procedures)[110] is required to be in radio communication and under the direct control of ATC. ATC would deny a small UAS flight operating under part 107 if lack of a transponder created an unacceptable risk for that operation.

The Human Factors and Ergonomics Society expressed concern that UAS might inadvertently enter class B airspace. ALPA was concerned about the ability of a small UAS pilot/operator to correctly identify specific airspace areas and make the correct determination of whether operations are permitted or must be coordinated with ATC.

This risk remains unchanged regardless of the restrictions imposed on operating in class B airspace. Other than the inner surface areas, there are very few instances where the floor of class B airspace is less than 1,000 feet above ground level, and therefore a vertical intrusion would be rare. The lateral boundaries of Class B airspace can be easily ascertained and avoided with proper planning of the operation. Airspace configuration is a knowledge area that will be tested for remote pilot certification, and a remote pilot should be aware of proximity of the unmanned aircraft to more restrictive airspace. Remote pilot certificate holders will also be regularly tested on their knowledge of airspace configuration, either as part of their flight review (for part 61 pilot certificate holders) or when they take the recurrent knowledge test (for non-part-61 certificate holders). In addition, applicants for a remote pilot certificate who do not hold a part 61 pilot certificate will be required to pass an initial aeronautical knowledge test that includes knowledge of airspace, airspace operating requirements, and the use of aeronautical charts. Pilots who hold a part 61 pilot certificate with an aircraft category and class rating will not have to take the initial aeronautical knowledge test, but they will have acquired the pertinent knowledge in order to obtain their part 61 pilot certificate.

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[109] FAA Safety Team Course ALC–40: Aviate—Navigate—Communicate.

[110] As it pertains to this discussion, Special Flight Rules Areas are areas of tightly constrained altitude and path where VFR aircraft can traverse Class B airspace without receiving a clearance or talking to ATC.

b. Operations in Class A Airspace

The NPRM proposed prohibiting small UAS operations in Class A airspace. Class A airspace starts at 18,000 feet mean sea level and extends up to 60,000 feet.[111] This rule will not adopt the proposed prohibition because a small unmanned aircraft will be unable to access Class A airspace without violating the other operational restrictions of part 107.

The Mid-Atlantic Aviation Partnership, Crew Systems, and three individual commenters questioned the need for specifically prohibiting operations in Class A airspace. One of the individual commenters did not have an objection to the proposed restriction, but stated that the other operational restrictions in the NPRM would make it impossible to operate in Class A airspace. Another individual commenter pointed out that the only location where an operation could meet all of the operational restrictions proposed in the NPRM and still be in Class A airspace is near the summit of Mt. McKinley. This commenter suggested that an explicit restriction on Class A airspace operations was unnecessary, as no one would bother to carry a small UAS up a mountain in order to fly it.

The FAA agrees with the commenter who stated that other operational restrictions in the NPRM would make it impossible to operate in Class A airspace. Title 14 CFR 71.33(b) designating Class A airspace in Alaska specifically excludes the airspace less than 1,500 feet above the surface of the earth. This eliminates the possibility of a small UAS operating under part 107 from reaching Class A airspace given the altitude limitations of the rule. Consequently, this rule will not adopt the proposed Class A airspace restriction.

c. Prohibited or Restricted Areas

The NPRM proposed prohibiting small UAS operations in prohibited and restricted areas without permission from the using or controlling agency, as applicable. Prohibited and restricted areas are designated in 14 CFR part 73. The proposed provision concerning prohibited and restricted areas was similar to the part 91 restriction on operations in these areas, and did not include any new UAS-specific prohibited or restricted areas.[112] After careful consideration of the comments, the FAA will adopt the provisions as proposed.

The FAA establishes prohibited and restricted areas when necessary to prohibit flight over an area on the surface in the interest of national security or welfare. As discussed in section III.J.2 of this preamble, several commenters requested that the FAA establish prohibited or restricted airspace over energy infrastructure facilities, citing national security concerns as the basis for their comments. However, four commenters also cited safety concerns when suggesting that the FAA establish such restrictions.

Southern Company and Edison Electric Institute, individually and jointly with NRECA and APPA, explicitly cited safety reasons for restricting operations near energy infrastructure facilities. Edison Electric Institute raised concerns regarding UAS operations over critical energy infrastructure, including electric transmission and distribution facilities, power generation facilities, transmission lines, and substations. The commenter noted that the FAA currently has a TFR for manned aircraft over generation facilities, which the commenter said should be extended to cover UAS. The commenter argued that the FAA should extend the TFR to small UAS because of "the obvious safety factor involved with any activity near high voltage equipment and the attendant economic loss that comes from the possible loss of electric distribution." EEI also submitted a separate, joint comment with NRECA and the APPA, which reiterated the same concerns.

Southern Company proposed that the FAA prohibit small UAS operations over power generation and transmission facilities, except by the utility or third parties acting on behalf of the utility. The commenter stated that the current NOTAM advising pilots to avoid overflight of power-generation facilities, including nuclear power plants, does not adequately address the potential risk small UAS pose. The commenter argued that, "[b]ecause of the small size, low-cost, great availability, and unmanned nature of small UAS, little deters small-UAS operators, as opposed to their manned aircraft counterparts, from operating over power generation and transmission facilities." The commenter further argued that, although small UAS are capable of safe operation in close proximity to most structures, operation next to power generation and transmission facilities may be subject to invisible hazards, such as fire hazards caused by light and heat produced from an electric arc, that may be unfamiliar to non-utility operators.

Consumers Energy Company and the American Fuel & Petrochemical Manufacturers also addressed the safety of energy infrastructure. Consumers Energy Company said the FAA should consider expressly identifying a zone of no small UAS operation within a specified distance from electrical facilities (substations, power lines, and utility poles), except for small UAS operations by the facilities' owners. The commenter said that such a rule would reduce the likelihood of small UAS operations negatively affecting electrical facilities and continue to ensure the safety of the United States electric grid.

The American Fuel & Petrochemical Manufacturers complained that the NPRM does not identify—much less address—issues of safety and security arising from certain scenarios that are a serious issue for its members, including an accidental crash into a facility, such as a refinery. The commenter expressed concern that the airspace and geographic limitations in the proposed rule are not sufficient to ensure the safety and security of critical infrastructure facilities, and therefore requested that the final rule prohibit the unauthorized use, or unauthorized operation, of a small UAS over all oil and gas production, handling, transport, and processing facilities.

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[111] 14 CFR 71.33.

[112] *See* 14 CFR 91.133.

EEI expressed concern that FDC NOTAM 4/0811 advising pilots to avoid the airspace over, or in proximity to, power plants would prevent electric utility companies from conducting small UAS flights around their own facilities.

Restricted airspace is designated when the FAA determines it is necessary to confine or segregate activities hazardous to nonparticipating aircraft. The FAA does not create special use airspace applicable to only one particular airframe or aircraft type. The public's right of free transit through the airspace includes the users of unmanned aircraft. Accordingly, the FAA declines commenters' suggestions to create UAS-specific restricted airspace around certain facilities. However, the FAA acknowledges commenters' concerns. In response to these concerns, the FAA emphasizes FDC NOTAM 4/0811, which states that ". . . to the extent practicable, pilots are strongly advised to avoid the airspace above, or in proximity to such sites as power plants (nuclear, hydro-electric, or coal), dams, refineries, industrial complexes, military facilities and other similar facilities. Pilots should not circle as to loiter in the vicinity over these types of facilities." [113] This NOTAM applies with equal force to pilots of manned and unmanned aircraft. In response to EEI's concern, the FAA notes that FDC NOTAM 4/0811 is advisory and thus, does not constitute a regulatory prohibition.

d. Areas Designated by Notice to Airmen

The NPRM proposed to prohibit operation of small UAS in airspace restricted by NOTAMs, including NOTAMs issued to designate a TFR, unless authorized by ATC or a certificate of waiver or authorization. After reviewing comments on this issue, the FAA will change the method by which remote pilots may gain permission to operate in airspace restricted by NOTAMs. The final rule will require that small UAS operators comply with the provisions of §§ 91.137 through 91.145, and § 99.7, as applicable.

Southern Company commented that electric utility companies should be excepted from TFRs under §§ 91.137(a)(2) and (a)(3) to be able to expeditiously restore power during natural disasters. The Washington State Department of Transportation, Aviation Division, recommended that small UAS be allowed to operate in airspace restricted by NOTAMs, including TFRs, if the aircraft is equipped with position-reporting transmission capability, if two-way communication can be maintained between the operator and ATC, and if the appropriate level of permission to enter the airspace has been obtained.

TFRs are implemented for a number of reasons, from protecting aircraft from hazards on the ground or other sight-seeing aircraft, to providing a safe environment for the operation of disaster relief aircraft. The Washington State Department of Transportation, Aviation Division, did not describe how a UAS equipped with position-reporting transmission capability and two-way radio communication would allow for safe operation in a TFR. NOTAMs contain time-critical aeronautical information that is either temporary in nature or not sufficiently known in advance to permit publication on aeronautical charts or other publications.[114] NOTAMs are available to the public on the FAA's Web site.[115] In response to Southern Company's comment, the FAA notes that NOTAMs exist to address hazards in the restricted airspace, and allowing an aircraft to enter TFRs based only on its mission does not address the hazard that warranted the airspace restriction.

However, these comments raise the question of whether the proposed rule needlessly conflicted with the NOTAM provisions in part 91. Part 91 contains various types of NOTAMs, and the requirements to gain permission differ accordingly. For example, § 91.137(b) requires an aircraft to be participating in hazard relief activities under the direction of the official in charge of on-scene emergency response activities in order to operate within an area for which the specified NOTAM has been issued.[116] Section 91.137(c) contains a number of conditions, at least one of which must be met in order to operate within an area for which the specified NOTAM has been issued.[117] Conditions under § 91.137(c) include that the aircraft be carrying law enforcement or media personnel, or the aircraft is operating under an ATC-approved IFR flight plan.[118] Conversely, a § 91.141 TFR in the proximity of Presidential and other parties has no exceptions other than those stated in the NOTAM.[119]

These provisions conflict with the proposed language in the NPRM that would allow operations in airspace restricted by NOTAM with ATC or COA permission. In considering this issue, the FAA has identified no UAS-specific concerns that would require treating small UAS differently, for TFR purposes, than aircraft operating under part 91. Thus, the FAA has amended the language of § 107.47 to require compliance with §§ 91.137 through 91.145 or § 99.7.

Additionally, the FAA notes that part 91 subpart J lists the provisions under part 91 that are waivable, and describes the process to request a waiver.[120] Because small UAS remote pilots will be subject to the part 91 provisions described above, the waiver provisions and process described in part 91 subpart J will also apply should a remote pilot wish to seek a waiver from the applicable part 91 provisions.

The Department of Defense (DOD) through its Policy Board on Federal Aviation (PBFA) submitted a comment on protecting certain military and Federal law enforcement facilities, recommending that "[t]he FAA Administrator classifies the airspace below 500 feet Above Ground Level (AGL) or within 2000 horizontal feet of a military installation (as defined in 10 U.S.C. 2801(c)(4)), or any buildings, grounds or property owned, occupied or secured in whole or in part by any Federal law enforcement or national security agency, as 'National Defense Airspace Area' in accordance with 49 U.S.C. 40103(b)(3)." [121] In their comments, the PBFA also requested that for small UAS operations within a military training route (MTR) or military operations area (MOA), that small UAS operators publish a NOTAM and notify the MTR/MOA scheduler at least 24 hours in advance.

The FAA implements the National Defense Airspace mentioned above as prohibited and restricted areas. These areas are created by rulemaking actions and charted on VFR and IFR charts. A prohibited area would prevent flight of all aircraft, manned and unmanned, including aircraft operated by the agency occupying the facility. In addition, a prohibited area is only established by the FAA over those areas demonstrating a need to prohibit all flight generally due only to national security concerns, a standard that is currently met by only eight areas in the United States. PBFA's requested language would have the effect of expanding the number of areas 100-fold.

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[113] FDC 4/0811, June 18, 2007, at 2106.

[114] *See* FAA Aeronautical Information Manual, para. 5–1–3.

[115] *See, e.g., https://www.notams.faa.gov/dinsQueryWeb/* and *http://www.faa.gov/pilots/flt_plan/notams/*.

[116] 14 CFR 91.137(b).

[117] 14 CFR 91.137(c).

[118] 14 CFR 91.137(c)(2), (3), (5).

[119] 14 CFR 91.141.

[120] *See* 14 CFR 91.903, 91.905.

[121] DOD Policy Board on Federal Aviation comment at 5.

A restricted area is also not appropriate because FAA Order 7400.2 defines the purpose of a restricted area as ". . . necessary to confine or segregate activities considered hazardous to nonparticipating aircraft."[122] Examples of hazardous activities in this context are live weapons fire, non-eye-safe lasers, and explosive demolition. The PBFA comment does not claim these facilities meet these criteria.

The FAA also declines to impose additional NOTAM requirements on small UAS operations. The NOTAM system is used to alert pilots of conditions or situations in the NAS that could present a hazard to aircraft. Historically, the FAA has used a NOTAM requirement in the COAs it issued for UAS operations. This was appropriate because small UAS operations were outside the regulatory structure that was then in place, and, while not inherently hazardous, small UAS flights required exemption or waiver from a number of FAA regulations. Because these operations deviated from existing FAA regulations, a NOTAM was an acceptable means to notify pilots of the activity. However, with part 107, the FAA is bringing a subset of UAS operations within the FAA regulatory structure. Civil, public, and military pilots are expected to be familiar with regulations affecting their flight, including the possibility of encountering UAS activity below 400 feet. Therefore, requiring a NOTAM would not be appropriate.

UAS remote pilots must be aware of their location and operating environment in relation to MTRs and MOAs. As part of their see and avoid responsibilities, remote pilots must use extreme caution when operating through an MTR or MOA. Because of the high speed of some military aircraft, the necessary reaction time will be substantially less in an MTR or MOA. Checking the NOTAM system and/or the responsible Flight Service Station for activity in these areas will provide information to a remote pilot that will help ensure a safe flight.

e. Operations in Class G Airspace

The FAA did not include any discussion of airports in Class G airspace in the NPRM and it did not propose any regulatory text to restrict small UAS operations in the vicinity of airports in class G airspace. Class G airspace is considered uncontrolled and ATC does not have authority or responsibility for separation of traffic. For operations in the vicinity of non-towered airports located in class E surface areas, the remote pilot in command must obtain prior permission from Air Traffic Control. After further review, the FAA will include a provision in the final rule that prohibits any small unmanned aircraft operations that interfere with operations and traffic patterns at any airport, heliport, or seaplane base.

Several commenters, including Trimble Navigation and NAMIC, supported allowing operations in class G airspace, without additional comment regarding operations in the vicinity of airports in class G.

AOPA and GAMA recommended prohibiting small UAS operations within a minimal accepted horizontal distance from airports in Class G airspace, but they did not recommend a specific distance. NBAA suggested that FAA restrict operations within a 3-mile radius of airports in class G airspace. The Airline Pilots Association and Hillsborough County Aviation Authority recommended restricting operations within a 5-mile radius of airports. Several individual commenters also recommended a prohibition of small UAS in the vicinity of airports.

The FAA agrees with commenters that supported the integration of small UAS operations with existing aeronautical operations in uncontrolled class G airspace because part 107 has specific risk mitigation and hazard reduction provisions that facilitate integration. First, small UAS pilots will be required to pass initial aeronautical knowledge testing before receiving a part 107 airman certificate. This knowledge testing will include operations in class G airspace. With issuance of the remote pilot certificate, the pilot will have the authority and responsibility of a remote pilot in command. The remote pilot in command will also be directly responsible for, and will be the final authority as to the operation of the small unmanned aircraft system. Finally, the remote pilot in command will be required to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of a loss of control of the aircraft for any reason.

The FAA acknowledges, however, that there is a risk associated with close operations between manned and unmanned aircraft. Therefore, this rule will include a performance-based approach to integrating small unmanned aircraft near airports, heliports, and seaplane bases. Because the NPRM did not contemplate prohibiting operations within the vicinity of an airport in class G airspace, the FAA will not restrict small UAS operations within a specified distance from an airport. Rather, in response to concerns regarding the integration of small UAS and manned aircraft, this rule will prohibit remote pilots from operating their small unmanned aircraft in a manner that interferes with operations and traffic patterns at airports, heliports, and seaplane bases.

While a small unmanned aircraft must always yield right of way to a manned aircraft, a manned aircraft may alter its flight path or delay its landing or take off in order to avoid a small UAS that may present a potential conflict or otherwise affect the safe outcome of the flight. For example, an unmanned aircraft hovering 200 feet above a runway may cause a manned aircraft holding short of the runway to delay take off, or a manned aircraft on the downwind leg of the pattern to delay landing. While the unmanned aircraft in this scenario would not pose an immediate traffic conflict to the aircraft on the downwind leg of the traffic pattern or to the aircraft intending to takeoff, nor would it violate the right-of-way provision of § 107.37(a), the small unmanned aircraft would have interfered with operations and traffic patterns at an airport.

In order to avoid interfering with operations in a traffic pattern, remote pilots should avoid operating in the traffic pattern or published approach corridors used by manned aircraft.[123] When operational necessity requires the remote pilot to operate at an airport in uncontrolled airspace, the remote pilot should operate the small unmanned aircraft in such a way that the manned-aircraft pilot does not need to alter his or her flight path in the traffic pattern or on a published instrument approach in order to avoid a potential collision. Because remote pilots have an obligation to yield right of way to all other aircraft and avoid interfering in traffic pattern operations, the FAA expects that most remote pilots will avoid operating in the vicinity of airports because their aircraft generally do not require airport infrastructure, and the concentration of other aircraft increases in the vicinity of airports.

The FAA adds this performance-based approach requirement in response to concerns that small UAS operations may present a hazard to manned aircraft operating at low altitudes in the vicinity of airports in both controlled and uncontrolled airspace. Due to the requirements for remote pilots to not operate in a careless or reckless manner and to yield the right of way to all other aircraft, the FAA does not consider it necessary to prohibit small UAS operations in the vicinity of an airport in uncontrolled airspace. Like ballooning, skydiving, banner towing, and other non-traditional aeronautical activities, the FAA expects that remote pilots will work with airport operators to identify ways to safely integrate small UAS operations into the flow of other operations at the airport.

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[122] FAA Order 7400.2.

[123] The official source regarding airport traffic patterns is the Airport/Facility Directory (A/FD). Instrument Approach Procedures are published by the FAA and can be found in U.S. Terminal Procedures Publications (TPPs), online from the FAA at *https://www.faa.gov/air_traffic/flight_info/aeronav/digital_products/dtpp/*, or in numerous third-party sources.

Experimental Aircraft Association, National Association of State Aviation Officials, Minneapolis-Saint Paul Metropolitan Airports Commission, US Hang Gliding & Paragliding Association, the Permanent Editorial Board of the Aviators Model Code of Conduct initiative, and several individual commenters said that FAA should require operators intending to fly small UAS within 5 statute miles of airports in Class G airspace to notify airport authorities in advance of the operations. These commenters said that such notification would allow airport authorities, in turn, to notify aircraft in proximity of the airport of the small UAS activity. City and County of Denver, Colorado and County of Los Angeles said that Airport Operators should be permitted to limit small UAS operations on and around airports.

Airport operators have the proprietary right to operate their airport in a safe and efficient manner. Under 49 U.S.C. 40103, the FAA has the sole authority to regulate airspace, including airspace overlying an airport. While airport operators have the ability to manage operations on the surface of the airport, airport operators may not regulate the use of airspace above and near the airport. In an effort to safely integrate small unmanned aircraft and manned aircraft at an airport, airport operators may recommend certain areas where small UAS operate, in order to avoid conflicts with manned aircraft. The FAA does not consider the notification of airport operators to significantly enhance the safety of integration with existing operations. The requirement for notification creates a burden on the airport operator with little benefit to users of the airport, because the airport operator would have no requirement to disseminate knowledge of small UAS operations to other airport users.

Instead, remote pilots should adhere to operational recommendations and discontinue operations if the potential for interference arises. If the concentration of air traffic at an airport results in the likelihood of a small UAS interfering with operations, the remote pilot should avoid operating at that airport. Remote pilots who do not hold a part 61 pilot certificate will be required to pass initial and recurrent aeronautical knowledge tests that include specific knowledge of airport operations. Part 61 pilot certificate holders acquired this knowledge when they obtained their part 61 pilot certificate.

6. Inspection, Maintenance, and Airworthiness Directives

This section discusses the maintenance and inspection requirements applicable to a small UAS operation. Those requirements will consist of: (1) Conducting a preflight check prior to each flight to ensure that the small UAS is in a condition for safe operation; and (2) discontinuing flight if the small UAS ceases being in a condition for safe operation. Additionally, to mitigate risks associated with possible loss of positive control, this rule will also require the remote pilot in command to, as part of the preflight inspection, ensure that all control links between the control station and the small unmanned aircraft are working properly. Finally, this section will explain why this rule will not include airworthiness-directive requirements in part 107.

a. Inspections and Maintenance

As discussed in section III.J.3 of this preamble, pursuant to section 333(b)(2) of Public Law 112–95, the FAA has determined that a small UAS will not be required to obtain airworthiness certification if satisfying the provisions of part 107. However, without an airworthiness certification process, the FAA still needs to provide criteria for small UAS to meet that support safe operations. In considering how to address this issue, the FAA notes that existing regulations applicable to manned civil aircraft require particular U.S. airworthiness certificated aircraft to be inspected every 12 months.[124] Maintenance that might be necessary as a result is governed primarily by the provisions of 14 CFR part 43. Part 43 requires that the inspection examine every system and component of the aircraft in detail to identify present conditions that may render the aircraft as unairworthy.[125] If the inspection reveals any hazardous characteristics that would render the aircraft as unairworthy, then maintenance, conducted pursuant to the regulations of part 43, must be performed in order to approve the return of an aircraft to an airworthy condition.

In place of the requirements of part 43, the NPRM proposed to create a maintenance and inspection framework that corresponds with the significantly reduced risk posed by small UAS operations conducted under part 107. First, the NPRM proposed to require, in § 107.21, that the operator must maintain the small UAS in a condition for safe operation and inspect the small UAS prior to each flight to determine it is in a condition for safe operation. Second, the NPRM proposed to prohibit a person from operating a small UAS unless that UAS is in a condition for safe operation. Third, the NPRM proposed to require the operator to discontinue the flight of the small unmanned aircraft when he or she knows or has reason to know that continuing the flight would pose a hazard to other aircraft, people, or property. Finally, to reduce the possibility of a malfunctioning control link, the NPRM proposed to require that, prior to flight, the operator must ensure that all links between the control station and the small unmanned aircraft are functioning properly.

For the reasons discussed below, this rule will require the remote pilot in command to check the small UAS to determine whether it is in a condition for safe operation. The remote pilot will be prohibited from commencing flight if the small UAS is not in a condition for safe operation. Additionally, the remote pilot in command will be required to discontinue the flight of the small unmanned aircraft if he or she knows or has reason to know that the small UAS is no longer in a condition for safe operation. This rule will also finalize as proposed the requirement that the remote pilot in command ensure, prior to flight, that all control links between the control station and the small unmanned aircraft are functioning properly.

i. Preflight Check and Maintenance Requirements

Most commenters, including Google, AOPA, the Property Drone Coalition and others, supported the proposed preflight inspection requirement. However, several commenters proposed changes to the requirement or requested clarification regarding what the inspection should entail. Two individual commenters expressed opposition to the preflight inspection requirement and suggested that the requirement is burdensome or unnecessary. One individual commented that it would be impractical to perform a meaningful inspection before every flight, since many UAS flights last only a few minutes each, and there is a need to minimize delay between flights. That commenter proposed instead that the FAA require only one thorough pre-flight inspection prior to the first flight of the day, and that the first flight of the day should be a test flight. Another individual commenter said a preflight inspection before every flight "could become a hassle and may be unnecessary," and that a monthly inspection would be more suitable.

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[124] *See* 14 CFR 91.409.

[125] *See* 14 CFR part 43, Appendix D (scope and detail of items as applicable to the particular aircraft) to be included in Annual and 100 hour inspections. Note: These items listed constitute inspection of the complete aircraft only and does not include interrelated system components and equipment.

This rule will require the remote pilot in command to conduct a preflight check prior to each flight to determine if the small UAS is in a condition for safe operation. An integral ground functional check as part of the preflight inspection will include a check of the associated data link equipment for proper operation. This is a check of the control link functionality between the ground control station and the small unmanned aircraft. If the preflight check reveals that the small UAS is not in a condition for safe operation or that the control link is not functioning properly, the remote pilot in command will be prohibited from commencing the flight operation until the small UAS is in a condition for safe operation and any and all control link deficiencies have been corrected.

To satisfy preflight check requirements, the remote pilot in command must check the entire unmanned aircraft and associated system components and equipment for visible defects such as broken or damaged parts, loose fasteners or wires, leaking fluids, and general wear and tear.[126] The remote pilot in command is responsible for making a condition for safe operation determination of the small UAS. A complete inspection of the aircraft and associated system equipment will include a functional ground check as a test to verify all control link systems are properly responding to control inputs and are otherwise functioning properly. The systems and equipment that could be checked in this manner could, depending on the complexity of the small UAS, include the engine, flight controls, landing gear, internal/external payload, link checks, ground control station, signal flow, auxiliary equipment rack, video dissemination, power requirements, and software configuration management. It is highly recommended that the remote pilot in command augment a complete small UAS preflight check by following manufacturer-suggested inspections and checks prior to conducting flight operations. The FAA will also issue guidance providing additional examples and best practices for how to properly conduct a preflight check to ensure that the small UAS is in a condition for safe operation.

The FAA notes commenters' concern that a mandatory check conducted prior to flight could be burdensome. However, the FAA anticipates that through repetition, the efficiency of the preflight check sequence will increase resulting in no more than a few minutes to complete the preflight check if the pertinent systems are functioning properly. As such, the FAA declines to remove the preflight-check requirement, as this check will serve to detect and mitigate the risks imposed by defects such as inoperative or deteriorating small UAS systems and components that may render adverse flight characteristics. Additionally, recurring checks will serve to identify equipment deficiencies that have occurred since the previous preflight inspection.

An individual commenter suggested that a test-flight is necessary because certain components and systems, such as avionics and control systems, cannot be tested on the ground. In response, the FAA notes that many of the systems that are tested through a test-flight cannot currently be tested without introducing additional risk into the operation. For example, flight termination (*e.g.* "return to home") and fail-safe systems are designed to trigger when the control link between the small unmanned aircraft and the control station is lost. In order to do a flight test of these systems, the remote pilot in command may need to deliberately sever the control link between the small unmanned aircraft and the control station during a test flight to see how the unmanned aircraft responds. A deliberate loss of positive control may introduce unnecessary risk to safe flight operation in the NAS. In addition, requiring flight testing prior to each flight would also impose an additional burden on the remote pilot in command in the form of time and power consumption. Accordingly, this rule will not impose a flight testing requirement.

DronSystems stated that a preflight inspection is unnecessary, asserting that a remote pilot could safely forego a preflight inspection by instead using "sophisticated asset management tools" or "UAS self-diagnostic" equipment.

The FAA is aware of no data showing that technology currently exists that could result in an equivalent level of safety to that attained by a visual and operational inspection conducted by the remote pilot in command. Visual and operational checks prior to each flight will serve as a vital safety practice essential for ensuring that the aircraft, control station, unmanned aircraft, and related integral systems are in a condition that will enable safe operation.

A number of commenters expressed concern that the proposed maintenance and inspection requirements were not stringent enough. ALPA and several individual commenters asserted that a preflight inspection conducted by the remote pilot is insufficient to ensure safe operation, as it would be conducted in the absence of defined criteria on which the owner/operator can base a decision about airworthiness. ALPA further stated that in the absence of airworthiness certification requirements combined with tamper-proof equipage that limits the vertical and lateral movement of unmanned aircraft, there is no way to ensure that a small UAS is safe and reliable.

Several commenters suggested that more formal maintenance and inspection requirements should be imposed on manufacturers and operators. The NextGen Air Transportation Program at NC State University said "some statement of airworthiness from the manufacturer, a certified inspector, or system provider with a date evaluation should be a minimum requirement." The commenter also said that the aircraft should be tested for airworthiness every 2 years. The State of Nevada, the Nevada Institute for Autonomous System, and the Nevada FAA-designated UAS Test Site, commenting jointly, asserted that a preflight inspection "clearly does not infer than an aircraft is airworthy," and said minimal standards should include lost link procedures and altitude determination. Other commenters similarly said small UAS should be required to have specific safety systems and protections. An individual commenter, who said self-certification establishes an unsafe precedent, said that UAS should be required to have redundant backup systems in place. That commenter said a standard airworthiness certificate may be unnecessary for small UAS, and instead recommended an experimental-type certification, which would ensure an airworthiness review and reduce the excessive burden on manufacturers.

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[126] The examples used in this preamble section are not intended to be exhaustive.

An individual commenter said that allowing the operator to conduct a preflight inspection to certify airworthiness "is a mistake." The commenter pointed out that for manned aircraft almost all of the equipment has to be periodically certified by an approved testing lab to ensure that it is still at manufacturer-issued standards. Without a similar requirement for small UAS, the commenter continued, the aircraft could have a modified airframe or propulsion system, the electric motors or batteries could be deteriorating, and the payload carrying capacity could be altered, among other concerns. Another individual commenter opposed allowing operators with no presumed specialized knowledge to make key safety determinations, and recommended the FAA conduct further cost-benefit analysis, "with a specific focus on the magnitude of potential damage that might be inflicted by errantly operated small UAVs."

The FAA notes commenters' concern with regard to airworthiness but disagrees with the position that the maintenance and inspection requirements proposed in the NPRM need to be made more prescriptive in this rule. The proposed requirements are appropriate to the type of risk posed by small UAS operating under part 107. Specifically, as discussed throughout this preamble, small unmanned aircraft operating under part 107 will: (1) Weigh less than 55 pounds; (2) not carry any people onboard; and (3) operate within visual line of sight and other operational parameters that mitigate risk to other aircraft operating in the NAS, people, and property on the ground. Thus, a small unmanned aircraft operating under part 107 has been determined to pose a significantly lower risk than a manned aircraft that weighs hundreds or thousands of pounds and carries one or more people onboard that may be injured in the event of a mishap. Consequently, imposing a more prescriptive level of maintenance and inspection requirements on small UAS operating under part 107 is not justified in this rule.

Completion of a preflight inspection of the small UAS prior to each flight will serve to mitigate risk in a manner appropriate for the risk posed by the small UAS operation. While this rule will not require small UAS to comply with part 43, the FAA encourages the use of certificated maintenance providers, which may include repair stations, holders of mechanic and repairman certificates, and persons working under the supervision of these mechanics and repairmen. Recommendation for the use of certificated maintenance providers is predicated on their heightened maintenance and inspection capabilities that may lend support to sustained conditions for safe operation of small UAS. Additionally, as discussed earlier, the FAA will publish guidance providing additional examples and best practices for how to ensure that a small UAS remains in a condition for safe operation.

Several commenters, including NAAA, Reabe Spraying Service, and the University of North Dakota's John D. Odegard School of Aerospace Sciences urged the FAA to include a requirement that remote pilots keep maintenance records. NAAA stated that it disagrees "with the agency's approach to abandon the aviation industry's longstanding requirement of proper recordkeeping and inspections in favor of accommodation for a new NAS entrant." The University of North Dakota's John D. Odegard School of Aerospace Sciences asserted that a review of the aircraft's maintenance history is necessary for a remote pilot to determine that the aircraft is in a safe condition for flight and that all manufacturer-suggested inspections, if any, are complied with. The commenter specifically recommended that, at a minimum, remote pilots be required to keep a permanent record of: (1) Component changes or replacements caused by inflight abnormalities; (2) command and control link frequency changes; (3) ground control station and aircraft software changes; and (4) airframe configuration changes which may affect the handling and performance characteristics of the aircraft.

The Kansas State University UAS Program said the lack of required maintenance documentation will cause significant challenges in determining the causal factors associated with small UAS accidents that are investigated by the FAA and NTSB. The commenter recommended that the records requirement in § 43.9 be applied to small UAS, with any necessary alterations "to ensure the traceability of maintenance and approval of the aircraft for return to service."

The Washington State Department of Transportation, Aviation Division said documentation of maintenance should be required for small UAS operated over large assemblies of people, such as professional sporting events, large concerts, and "similar environments where a safe landing area is likely unavailable." NetMoby suggested that operators should be required to log the results of each preflight inspection for inspection by the FAA if needed.

Under Executive Order 12866, the FAA may "adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs." Imposing maintenance or preflight-check recordkeeping requirements, such as the ones suggested by the commenters, would likely result in a significant cost because the remote pilot in command would have to create new paperwork every time that he or she conducts a preflight check, or every time that any type of maintenance is conducted on the small UAS. At this time, the FAA does not have data to determine whether the safety benefits of additional documentation would be sufficient to justify this burden, especially in light of the significant safety mitigations already provided by the other provisions of part 107. Accordingly, at this time, the FAA declines to impose the suggested documentation requirements on small UAS operated under this rule.

Boeing asked the FAA to provide a definition for the phrase "safe operation." In the context of preflight check and maintenance requirements, the FAA has concluded that "safe operation" pertains to mechanical reliability, and is predicated on overall condition of the entire unmanned aircraft and integral system equipment relative to wear and deterioration. Determinations made of the overall condition of the small UAS includes an evaluation based on the make, model, age, type and completeness of continued maintenance and inspections of the aircraft and associated system equipment making up the entire UAS. Some examples of characteristics that may render a small UAS not in a condition for safe operation are: (1) Unsecure, damaged airframe structures affecting flight characteristics; (2) damaged primary flight control surfaces affecting flight control characteristics; (3) inoperative, intermittent propulsion system components; (4) inoperative, intermittent flight controls; (5) data link equipment failures, *e.g.*, control outputs from ground control station not matching control inputs to aircraft flight controls; and (6) damaged or distorted propeller blades.

The Permanent Editorial Board of the Aviators Model Code of Conduct Initiative stated that the rule should be expanded to require certain operational checks, such as hover-checks for multirotors and rotorcraft, arguing that such checks serve an important safety purpose.

There is a wide variety of small UAS and many of them use different systems that are constructed and function in different ways. As such, the specific tasks necessary to check whether safety-relevant components are functioning properly will vary between different small UAS. This rule will require the remote pilot in command to check at a minimum the control link and available power to complete the intended flight.[127] However, beyond control link there may be many other systems and equipment, depending on the complexity of the small UAS, that may be necessary for safety of flight. The remote pilot in command will have to check those systems to ensure that they are functioning properly, but the specific tasks necessary to conduct these checks will be determined by the remote pilot so long as the tasks enable him or her to reasonably ascertain whether the pertinent systems are functioning properly.

Several commenters, including Transport Canada, Skycatch, the Kansas State University UAS Program, and Prioria Robotics, stated that the FAA should require that remote pilots employ OEM-provided checklists and manuals when carrying out preflight inspections. The Small UAV Coalition suggested the FAA consider adopting its standard phrase from its section 333 exemptions that the remote pilot "must follow the UAS manufacturer's maintenance, overhaul, replacement, inspection, and life limit requirements for the aircraft and aircraft components." The Professional Helicopter Pilots Association suggested that UAS manufacturers be required to provide "airworthiness" checklists. PHPA added that in the absence of a list of requirements, the criteria for a preflight inspection become subjective. ALPA also recommended that manufacturers be required to define parameters for maintenance and inspection. Similarly, Transport Canada asked whether consideration has been given to requiring the UAS operator to either adhere to the manufacturer's maintenance instructions and schedule or, in the alternative, develop and adhere to his or her own maintenance schedule.

DJI noted that it already provides its clients with significant information on how to inspect and maintain DJI's small UAS. Several other commenters addressed the use of manufacturer-developed minimum maintenance standards. NAAA noted that the FAA has not set standards for what manufacturer's instructions for UAS are to contain, and recommended that manufacturers make a manual available for approval by the FAA. A few individual commenters also said manufacturers should provide an operational manual, which they said should also contain a maintenance schedule.

The FAA agrees with commenters that manufacturer-developed manuals, checklists, and instructions can provide excellent guidance about how to maintain a small UAS in a condition for safe operation. As such, the FAA recommends that the remote pilot in command familiarize him or herself with this material and strongly consider using the approach specified in the manufacturer's materials. However, the manufacturer-recommended approach may not be the only way to keep a small UAS in a condition for safe operation. As such, this rule will simply require that the small UAS must be in a condition for safe operation. The specific method by which the small UAS achieves this state will be determined by its owner and the remote pilot in command; this could be the method recommended by the manufacturer or in accordance with a developed maintenance and inspection program that may encompass and exceed the manufacturer's program. The remote pilot in command and/or small UAS owner may also follow the best practices outlined in the guidance provided by the FAA.

The FAA acknowledges the concern raised by commenters that some manufacturer manuals may not provide sufficient guidance for the remote pilot in command to properly inspect the small UAS. However, this rule will not require the remote pilot in command to comply with the manufacturer's manual as part of the preflight check. If the manufacturer's manual provides sufficient guidance and the remote pilot in command determines that this guidance is the best way to conduct the preflight check, the remote pilot can conduct the check according to the manufacturer's instructions. If the manual is deficient or the remote pilot in command determines that a different method of conducting the preflight check is more appropriate, the remote pilot in command will assume the responsibility of making that decision as well.

The FAA notes that, as discussed in section III.F.2.j of this preamble, in order to obtain a remote pilot certificate, an applicant will have to demonstrate that, among other things, he or she has acquired knowledge about how to maintain and inspect a small UAS. Thus, the remote pilot in command will have the knowledge needed to select the best method by which to conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation and the control link is functioning properly.

Several commenters suggested that the FAA should develop—or encourage the development of—universal inspection and maintenance criteria to be used by remote pilots when conducting preflight inspections, or maintaining their aircraft. For example, the Nevada Institute for Autonomous Systems suggested that a preflight inspection would be insufficient to ensure safety in the absence of "minimum maintenance standards." Predesa stated that the FAA should consider publishing its own general guidelines on preflight inspections, including recordkeeping guidelines to track "major modular replacements of small UAS equipment." The Associated General Contractors of America asked the FAA to provide more guidance on "the scope and nature" of the required preflight inspections. Specifically, the commenter questioned: (1) Whether the time and effort the agency expects an operator to devote to preflight assessments depends on the size or nature of the aircraft, or the scope, complexity or other specifics of the operation; (2) to what extent the agency will defer to an operator's exercise of his or her judgment; (3) if an operator performs a manufacturer-recommended preflight inspection, whether the FAA will defer to those recommendations; and (4) whether the FAA will defer to any more specific industry standards and whether the agency will go so far as to encourage the development of such standards.

The State of Nevada, the Nevada Institute for Autonomous Systems, and the Nevada FAA-designated UAS Test Site, commenting jointly, recommended that minimum maintenance standards be developed with the help of the future FAA UAS Center of Excellence and the UAS Test Sites. ASTM International pointed out that it has developed approved standards for Maintenance and Continued Airworthiness of Small Unmanned Aircraft Systems (F2909). Predesa said that remote pilots should consider applying the Academy of Model Aeronautics National Model Aircraft Safety Code's "good general safety practices" pre-flight checks. Similarly, an individual commenter suggested that the small UAS should be maintained using standards developed and approved by a recognized standards development organization.

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[127] The sufficient-power requirements of this rule are discussed in section III.E.7.c of this preamble.

The FAA agrees that guidelines concerning the preflight check would assist the remote pilot in command with complying with this requirement. As discussed earlier, the FAA plans to issue guidance containing best practices for determining whether a small UAS is in a condition for safe operation. Separately from FAA guidance, other supporting industry guidance also exists that could be utilized by the remote pilot in command. The FAA notes the availability of ASTM standards such as practices for maintenance and continued airworthiness of small UAS, as well as AMA's standards, as additional guidance that may be utilized by the remote pilot in command. The FAA also encourages interested stakeholders to develop additional guidance if they feel that it may provide further assistance to the remote pilot in command.

With regard to the time and effort needed to conduct the preflight check, the FAA notes that this will vary depending on the size and complexity of the aircraft and the types of components used in the small UAS. Larger and complex UAS that have more components will likely take longer to check than simple micro UAS with few components. However, as discussed earlier, the FAA does not anticipate that an experienced remote pilot in command will need more than a few minutes to conduct the preflight check (assuming the preflight check does not reveal any adverse characteristics that render the small UAS not in a condition for safe operation). Repetition of the preflight inspection and checks will enhance the remote pilot's skill and efficiency in completing this requirement.

An individual commenter said the FAA should delete proposed § 107.21(a), which requires an operator to maintain the small UAS in a condition for safe operation, because aircraft maintenance should be the responsibility of the registered owner, and not all operators are the registered owners of the vehicles they operate.

Proposed § 107.21(a) would have required that the small UAS must be maintained in a condition for safe operation while § 107.15(a) would have prohibited the operation of a small UAS unless it is in a condition for safe operation. The FAA agrees that proposed § 107.21(a) is duplicative with § 107.15(a) and as such, § 107.21(a) has been removed from this rule. For ease of readability the FAA has also moved the regulatory text of proposed § 107.21(b), which requires a preflight check to determine whether the small UAS was in a condition for safe operation, into § 107.15(a).

ii. Discontinuing Flight

A small UAS that appears to be in a condition for safe operation during the preflight check may become unsafe for operation during flight. For example, the small unmanned aircraft could sustain damage or partial loss of propulsion during flight rendering that aircraft unsafe for continuing the flight. As such, the NPRM proposed to require the operator to discontinue the flight of the small unmanned aircraft when he or she knows or has reason to know that continuing the flight would pose a hazard to other aircraft, people, or property. For the reasons discussed below, this rule will revise the proposed provision to require the remote pilot in command to discontinue flight if he or she knows or has reason to know that the small UAS is no longer in a condition for safe operation.

Several organizations, including DJI, Predesa, State Farm and the Small UAV Coalition, supported the provision as proposed. On the other hand, the University of North Dakota's John D. Odegard School of Aerospace Sciences and an individual commenter suggested that the term "hazard" in this context should be qualified as it is in § 107.19(b), which uses the phrase "undue hazard." These commenters suggested that § 107.15(b) should be amended for consistency, in part, to read ". . . pose an *undue* hazard to other aircraft, people, or property." (Emphasis added).

The FAA agrees with the University of North Dakota and the individual commenter that the term "hazard" in proposed § 107.15(b) is inconsistent with the standard of "undue hazard" in § 107.19. In considering how to address this issue, the FAA noted that § 107.15(b) is intended to address instances in which a small UAS that is in a condition for safe operation during the preflight check ceases being in a condition for safe operation after flight commences. Accordingly, the FAA has amended § 107.15(b) to reflect the fact that the pertinent standard is "condition for safe operation" and not "hazard."

AIA suggested that the FAA should define the timing of the discontinuation of flight if the small UAS ceases being in a condition for safe operation. AIA suggested that the requirement should be to terminate flight "as soon as practicable." In response, the FAA notes that, if a small UAS should cease being in a condition for safe operation during flight, the remote pilot in command must immediately discontinue the flight by landing the small unmanned aircraft at the first available location where the landing can be conducted safely.

iii. Control Link Check

Several commenters specifically addressed the proposed requirement to ensure that all links between the control station and the small unmanned aircraft are working properly. DJI and Qualcomm supported the proposed requirement, without further comment. ALPA also supported the proposed requirement, but then recommended an additional requirement to verify the usable range of the transmitter in the control station before a flight. Transport Canada questioned whether the FAA has considered requiring the UAS operator to check for radio interference during the preflight inspection. The NextGen Air Transportation Program at NC State University argued that the proposed requirement should include "something about spectrum management/approvals."

This rule will require the remote pilot in command to ensure that all links between the control station and the small unmanned aircraft are working properly. This can be done simply by inputting specific commands into the control station and seeing whether the small unmanned aircraft carries out the pertinent command. The FAA acknowledges the concerns raised by ALPA but the suggested requirements would not be appropriate for all small UAS operations. Specifically, in order to verify the usable range of the control-station transmitter, the remote pilot in command would likely need to fly the small unmanned aircraft to the limits of the radio signal to determine the point at which the signal begins to degrade. Flying a small unmanned aircraft to the point that the control link begins to degrade may pose a heightened risk of loss of positive control, and as such, the FAA will not require the remote pilot in command to conduct this type of testing in this rule.

With regard to radio interference and spectrum management, the FAA notes that the requirement for a preflight control link check is performance-based and already addresses radio interference and spectrum issues. Specifically, under § 107.49(c), a small unmanned aircraft may not be operated in the NAS if the control link between the ground control station and the small unmanned aircraft is not working properly. If radio interference or a spectrum issue results in a control link working improperly, the small UAS operation will be prohibited from commencing until the issue has been resolved and the control link is once again working properly.

b. Airworthiness Directives

The NPRM also proposed to require that small UAS comply with all applicable airworthiness directives. For the reasons discussed below, the FAA will not finalize this proposed requirement in the final rule.

A number of commenters objected to the proposed airworthiness-directives requirement. Aviation Management and two individual commenters stated that the proposed requirement should be removed because part 107 does not contain any airworthiness certification standards. Similarly, Boeing asked for clarification as to what an operator would be required to comply with, since there are no specific airworthiness requirements.

The FAA agrees with commenters that an airworthiness-directive framework may, at this time, not be suitable for part 107 small UAS because of the lack of airworthiness certification requirements in part 107. Accordingly, this rule will not finalize the proposed airworthiness-directive requirement. However, the FAA notes that it is not precluded from taking appropriate action to address unsafe conditions that may be identified in small UAS subject to part 107. Any such actions would be conducted in accordance with the Administrative Procedure Act.

7. Additional Operating Provisions

a. Careless or Reckless Operation

Current FAA regulations (codified in 14 CFR 91.13(a)) prohibit a person from operating an aircraft in a careless or reckless manner so as to endanger the life or property of another. The NPRM proposed to apply similar regulations in § 107.23 to ensure that a small UAS is not operated in a hazardous manner. For the reasons discussed below, the FAA will finalize this provision as proposed in the NPRM.

One commenter stated that § 107.23 must have the same force and effect as 14 CFR 91.13. Two commenters said that "careless and reckless" is a vague and subjective standard, with one stating that it is unenforceable unless the FAA describes concretely what constitutes careless or reckless behavior.

Section 107.23(a) will prohibit a person from operating a small UAS in a careless or reckless manner so as to endanger the life or property of another. This provision is derived from a similar prohibition on careless/reckless conduct that currently exists for manned aircraft in § 91.13(a), and as such, the FAA expects that these two provisions will have similar effects.

The determination of whether conduct is careless or reckless is made on a case-by-case basis through NTSB caselaw. The FAA has issued guidance (FAA Order 8900.1, vol. 14, ch. 3, sec. 5) summarizing the pertinent caselaw, which provides illustrative examples of conduct that is considered to be careless or reckless.

One commenter suggested that the FAA should permit local law enforcement authorities to enforce the prohibition against careless or reckless operations. In response, the FAA notes that, as discussed in section III.I of this preamble, the FAA cannot delegate its formal enforcement functions.

One commenter asked the FAA to clarify what evidence would be used to prove that a remote pilot operated in a careless or reckless manner. Another commenter suggested that a flight data recorder be required to facilitate the enforcement of the prohibition against careless or reckless operations.

A flight data recorder requirement would add cost, complexity, and weight to small unmanned aircraft without a corresponding incremental safety benefit. The FAA notes that enforcement of violations will be similar to enforcement conducted for part 91 operations: In addition to conducting routine surveillance of part 107 operations, the FAA will act on reports of violations to conduct further investigations. The FAA relies on many sources to further investigate complaints, such as accounts from witnesses, video, and reports from Federal, State, and local law enforcement agencies.

b. Drug and Alcohol Prohibition

As proposed in the NPRM, this rule will require the remote pilot in command, the person manipulating the flight controls of a small UAS, and the visual observer to comply with the drug and alcohol provisions of 14 CFR 91.17 and § 91.19. Section 91.19 prohibits knowingly carrying narcotic drugs, marijuana, and depressant or stimulant drugs or substances in civil aircraft unless authorized to do so by a Federal or State statute or government agency. Additionally, § 91.17 prohibits a person from acting as a crewmember of a civil aircraft: (1) Within 8 hours after the consumption of any alcoholic beverage; (2) while under the influence of alcohol or any drug that affects the person's faculties in any way contrary to safety; or (3) while having an alcohol concentration of 0.04 or greater in a blood or breath specimen. Under § 91.17, a remote pilot in command, the person manipulating the flight controls of a small UAS (if that person is not the remote pilot in command), and the visual observer must submit to testing to determine alcohol concentration in the blood if there is a suspected violation of law or § 91.17. These tests must be submitted to the FAA if the FAA has a reasonable basis to believe that the person violated § 91.17.

The Small UAV Coalition, the Aviation Division of Washington State Department of Transportation, and three individuals generally supported the provisions related to drugs and alcohol. One commenter asserted that the FAA proposed no requirement about the condition of the operator, such as illness or impairment by drugs or alcohol, and that small UAS remote pilots should be required to self-certify that they are in a condition that enables them to safely operate a small UAS.

The FAA clarifies that this rule does not allow operation of a small UAS if the remote pilot in command, visual observer, or the person manipulating the flight controls of a small UAS is unable to safely operate the small UAS due to drug or alcohol impairment. As discussed previously, this rule will, among other things, require these people to comply with the provisions of § 91.17.

With regard to non-drug or alcohol impairment, such as an illness, the FAA notes that, as discussed in section III.F.2.c of this preamble, a person may not act as a remote pilot in command or visual observer or manipulate the flight controls of a small UAS if he or she knows or has reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small UAS. It is also not necessary to require a self-certification statement prior to every small UAS flight because this requirement is not imposed on manned-aircraft operations by the drug and alcohol provisions of §§ 91.17 and 91.19.

Cherokee Nation Technologies commented that over-the-counter medications could impair the ability to safely operate a small UAS. The FAA agrees with this comment and notes that over-the-counter medications are addressed by the provisions of this rule. Specifically, § 91.17(a)(3) prohibits the use of any drug that affects the person's faculties in any way contrary to safety.

The University of North Dakota's John D. Odegard School of Aerospace Sciences commented that the contents of §§ 91.17 and 91.19, which are cross-referenced in proposed part 107, should be included in their entirety in proposed part 107 to enable ease of reading and understanding the regulations. However, duplicating the entire regulatory text of §§ 91.17 and 91.19 in part 107 is unnecessary in this case. FAA regulations, such as §§ 91.17

and 91.19, may be changed by future rulemakings or statutory changes, and cross-referencing regulatory sections in part 107 will minimize inconsistencies between part 107 and any subsequent amendments made to §§ 91.17 or 91.19. Additionally, cross-referencing regulatory sections allows the FAA to avoid duplicative regulatory text in its regulations.

Two commenters expressed concerns about the potential use of small UAS for drug-smuggling and other illicit acts. The Institute of Makers of Explosives asked that the FAA specify penalties for the use of small UAS in committing illicit acts, including those involving drugs and alcohol. One commenter stated that any remote pilot should lose his or her privileges under part 107 if found to be operating while in a condition that does not permit safe operation of the small UAS. Another commenter suggested that remote pilot certificates should be denied, suspended or revoked for committing an act prohibited by 14 CFR 91.17 or § 91.19.

The FAA emphasizes that, in addition to the requirements of § 91.17 discussed above, this rule will also require compliance with § 91.19, which prohibits the knowing transportation of illegal drugs unless authorized by a Federal or State statute or government agency. If a person violates § 91.17 or § 91.19, the FAA can take enforcement action, which can result in the imposition of civil penalties or suspension or revocation of that person's airman certificate. People who engage in illegal conduct involving drugs may also be subject to criminal prosecution under Federal or State law.

c. Sufficient Power for the Small UAS

For the reasons discussed below, this rule will amend the proposed requirement that, prior to flight, the remote pilot must ensure that the small UAS has sufficient power to operate for its intended operational time and an additional five minutes. After further consideration, the FAA retains the requirement that the small UAS has enough power to operate for its intended operational time, but has eliminated the additional five-minute requirement.

Several commenters, including DJI, ALPA, and Qualcomm, supported the FAA's proposal. On the other hand, the Kansas State University UAS Program, Center for Robot-Assisted Search and Rescue, Consumers Energy Company and an individual generally noted that some UAS have very short battery lives. One commenter asserted that some small UAS have only five minutes of total available flight time. Commenters suggested that a small UAS should simply be required to have enough available power to operate for its intended time and then land safely, which could require significantly less than five minutes of total power.

The FAA concurs with commenters who suggested that a small UAS should be required to have enough available power to operate for its intended operational time and then land safely. As discussed in section III.E.3.a of this preamble, small UAS operations conducted under this rule will operate in a confined area of operation. As a result of this confined area, the prohibition of operations over people, and due to the defined weight of the small unmanned aircraft, small UAS operations conducted under part 107 will generally pose a low risk as compared to manned aircraft. As such, a requirement for an additional five minutes of power is unnecessary. The FAA acknowledges that some small unmanned aircraft flights may be conducted for very short durations at very low altitudes, and the need for a larger battery to provide an additional five-minute power reserve may significantly limit those operations without a corresponding safety benefit.

Several commenters suggested different approaches other than the requirement for five minutes of additional power. Embry-Riddle and several individual commenters generally noted that different small UAS have differing amounts of power and flight time available. These commenters suggested that a requirement that is based on a 10% reserve of power would better accommodate small UAS of differing design, equipment, and performance standards. The Center for Robot-Assisted Search and Rescue suggested that the reserve power requirement be based on the distance needed for the aircraft to return to the remote pilot. An individual commenter noted that gas powered aircraft may need a longer fuel reserve, such as 10 to 15 minutes, to allow for extended emergency flights.

The FAA notes that remote pilots are required under this section to ensure that the small UAS has enough power to operate for its intended operational time. The intended operational time includes all power requirements for the entire flight, including take off and a controlled landing. While the final rule does not prescribe a specific amount of reserve power, the FAA notes that a remote pilot must take into consideration the type of operation being conducted. The remote pilot must ensure that sufficient power is available to complete the intended flight, or terminate the flight early if the remote pilot has reason to believe that the power remaining is insufficient to continue flight. A remote pilot who fails to properly plan for sufficient power may also be in violation of §§ 107.15, 107.23, and 107.49, particularly if insufficient power results in loss of positive control of the small unmanned aircraft.

The reserve power requirement does not need to be based on the distance needed for the small unmanned aircraft to return to the remote pilot because small unmanned aircraft flight can be terminated through a controlled safe landing; the aircraft does not necessarily need to return to its point of origin. A percentage-of-power requirement would also be unduly burdensome, as it would require UAS with greater total power capacity to hold a larger power reserve than a UAS with a lesser power capacity.

DJI, ALPA and QUALCOMM suggested that the FAA require equipment that would accurately display how much battery life remains to the remote pilot. In response, the FAA emphasizes that this rule does not prohibit remote pilots from using the type of equipment suggested by the commenters. However, while equipage may be one way to measure battery life, it is not the only way to measure remaining battery life. For example, prior to flight, a remote pilot could determine the total amount of time that a battery can provide power before it needs to be recharged. Then, during flight, the remote pilot could simply use a watch to determine how much energy is left in the battery. Accordingly, mandating specific equipage displaying how much battery life is left in the small UAS is not necessary in this rule.

F. Remote Pilot Certificate

As discussed in section III.E.1 of this preamble, this rule will create a new small-UAS-specific airman certificate called a remote pilot certificate with a small UAS rating. A person will be required to obtain this airman certificate prior to acting as a remote pilot in command. This rule will also require any person manipulating the flight controls of a small UAS to obtain a remote pilot certificate with a small UAS rating unless: (1) That person is under the direct supervision of a remote pilot in command; and (2) the remote pilot in command has the ability to immediately take direct control of the flight of the small unmanned aircraft. For the reasons discussed in section III.E.1 of this preamble, a UAS-specific airman certificate is preferable in this rule to one of the existing part 61 pilot certificates because the process for obtaining the remote pilot certificate will focus on UAS-specific areas of knowledge that are typically not included in the requirements associated with current part 61 pilot certificates.

1. Use of UAS Experience To Apply for Part 61 Pilot Certificate

In the NPRM, the FAA emphasized its desire to maintain a distinction between a remote pilot certificate and the airman certificates issued under parts 61, 63, and 65. As such, the NPRM proposed § 61.8, which would prohibit UAS activities conducted under this rule from being used to meet part 61 requirements. Under proposed § 61.8, activities would include any training, certification, or flights associated with small UAS under part 107. The FAA did not receive any adverse comments on this aspect of the proposed rule, and as such, this rule will finalize § 61.8 as proposed.

2. Remote Pilot Certificate Eligibility and Issuance

The NPRM proposed establishing eligibility requirements for a part 107 airman certificate and specifying when a certificate would be issued. The NPRM proposed that an applicant must be: (1) At least 17 years of age; (2) able to read, speak, write and understand the English language; and (3) vetted by the Transportation Security Administration. Additionally, the NPRM proposed that the applicant must pass an initial aeronautical knowledge test and self-certify, at the time of application, that he or she does not have a medical condition that could interfere with the safe operation of a small UAS.

As discussed in more detail below, the process for issuance of a remote pilot certificate will be as follows. First, an applicant will have to take and pass an initial aeronautical knowledge test. After taking the knowledge test, the applicant will be provided with an airman knowledge test report showing his or her test results. If the applicant passed the test, the applicant will then fill out an application for a remote pilot certificate using either the FAA's electronic application process (referred to as the Integrated Airman Certification and Rating Application (IACRA) system) or a paper application. The FAA will then forward the applicant's information to the TSA for security vetting to determine whether the applicant poses a security risk. Once TSA notifies the FAA that the applicant does not pose a security risk the FAA will issue an electronic temporary remote pilot certificate to an applicant who applied through the IACRA system.[128] This temporary certificate (valid for 120 days after receipt) will be issued within 10 business days after receipt of an electronic application, and it will allow the applicant to exercise all the privileges of a remote pilot certificate with a small UAS rating. Once all other FAA-internal processing is complete, the FAA will issue the applicant a permanent remote pilot certificate.

Holders of a part 61 pilot certificate other than student pilot who have completed a flight review within the previous 24 months will have the option of a different certification process. These pilot certificate holders will be allowed to substitute completion of an online training course for the small UAS aeronautical knowledge test. Upon completion of the training course, the part 61 pilot certificate holder will then go to one of the following authorized portals: An FAA Flight Standards District Office (FSDO), a designated pilot examiner (DPE), an airman certification representative (ACR) for a pilot school, or a certificated flight instructor (CFI). The certificate holder will provide his or her remote pilot certificate application and supporting documentation to that portal to verify the applicant's identity, fill out the pertinent portion of the application, and then forward the completed application to the FAA Airman Certification Registry. Because a part 61 pilot certificate holder has already been vetted by TSA, he or she will be issued a temporary remote pilot certificate with a small UAS rating, valid for 120 days, immediately upon the FAA's receipt of the completed application via IACRA. Once all other processing is complete, the FAA will issue a permanent remote pilot certificate.

The FAA emphasizes that part 61 pilot certificate holders are not required to use the process discussed in the previous paragraph and can instead apply for a remote pilot certificate by taking the small UAS initial aeronautical knowledge test. Part 61 pilot certificate holders who pass the knowledge test will not be required to submit their application to a FSDO, DPE, ACR, or CFI. Instead these certificate holders may submit their applications via IACRA. Because these certificate holders have already been vetted by TSA, they will be issued a temporary remote pilot certificate, valid for 120 days, upon FAA's receipt of their application via IACRA regardless of the method they use to qualify for the certificate (*i.e.* knowledge test or online training course).

a. Minimum Age

The NPRM proposed that a person must be at least 17 years of age to be eligible for a remote pilot airman certificate with a small UAS rating. This minimum age would be consistent with existing FAA minimum age requirements for the sport pilot, recreational pilot, and private pilot airman certificates with an airplane or rotorcraft rating. The FAA also invited comment on whether to adopt a minimum age of 16 years, which would be consistent with existing FAA minimum age requirements for the sport pilot and private pilot airman certificates with a glider or balloon rating. After review of the comments, the FAA adopts a minimum age of 16 for a person to be eligible for a remote pilot certificate with a small UAS rating.

Fourteen commenters, including the Small UAV Coalition, AUVSI, and NAMIC, all agreed that the proposed minimum age of 17 generally strikes an appropriate balance between safety and operational viability for low risk small UAS operations, ensuring that baseline safety is enhanced without unduly burdening low risk small UAS operators or their operations. These commenters argued that the NPRM's proposal is consistent with the requirements for other pilot certificates and, at this time, there is a lack of data and evidence to support lowering the age to 16. The commenters added that although persons under the age of 17 are already allowed to operate model aircraft, it is unclear if there is a strong need for allowing younger remote pilots to operate non-hobby and non-recreational small UAS.

University of North Dakota's John D. Odegard School of Aerospace Sciences added that 16-year-old student pilots are accompanied or monitored by an instructor, whereas, a small UAS operator would effectively be unmonitored. Federal Airways & Airspace also agreed with limiting the certification age to 17 years old, and pointed out that the National Institute of Mental Health has stated on their Web site that the rate of death by any injury of those aged 15 to 19 years old is six times higher than that for individuals aged 10 to 14 years old. Federal Airways & Airspace also mentioned that studies have shown that the human brain does not reach maturity until the early 20s, and the CDC states that those aged 16 to 19 are almost three times more likely than 20-year-olds to be in a fatal motor vehicle accident.

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[128] Because the temporary certificates will be issued electronically, the FAA will be unable to issue them to applicants who did not apply through electronic means.

Several commenters recommended raising the minimum age above 17. Commenters including the General Aviation Manufacturers Association (GAMA), Textron Systems, and Aerius Flight, recommended an 18-year-old eligibility requirement for small UAS operators, because it aligns with existing airman certification standards for other commercial flight operations. One commenter asserted that 18 is the appropriate age for an operator certificate because it is the age at which an individual is an adult and able to enter into legally binding contracts. The Air Line Pilots Association and Transportation Trades Department, AFL–CIO said small UAS operators should hold a commercial pilot certificate, and should therefore be a minimum of 18 years old. Several commenters recommended the minimum age requirement be raised even higher, to 21 or 25 years old.

Conversely, 36 commenters, including NBAA, AIA, and the Kansas Farm Bureau, argued that the minimum age should be lowered to 16. One commenter asserted that: (1) Flying a manned aircraft is considerably more complex than operating a small UAS; and (2) a small UAS has no people on board who would be injured in the event of an accident. Many other individuals argued that because of all the operating constraints contemplated by the NPRM, a 16-year-old should be able to safely operate a small UAS without exposing anyone to undue risk.

Nine commenters asserted that a minimum age of 16 would also align with current requirements for glider and balloon pilots. One commenter argued that the NPRM does not provide any justification to support why the operator of a small UAS must be older than a sport pilot, recreational pilot, or private pilot airman with a glider rating,[129] or a student pilot of a glider.[130] NBAA stated its belief that a lesser risk exists for small UAS operations conducted within the confines of the rule when compared to glider and balloon operations conducted within controlled airspace.

One of the commenters from the Center for Information & Research on Civic Learning and Engagement (CIRCLE) argued that the minimum age should be dropped to 16. The commenter conducted research that it claimed supports the proposition that 16-year-olds have the same capacity for sophistication as 21-year-olds. Although the research is geared towards younger individuals voting in local elections, not operating aircraft, the commenter believed that it makes a general statement about the intellectual capacity of minors at the age of 16.

Prioria Robotics argued that the FAA should allow an apprenticeship-like certificate to be held by those younger than 18. Others argued that the minimum age for independent operation of a small UAS should be 16. One individual suggested that if the operator is under the age of 16, he or she should be required to be accompanied by a qualified operator who is over the age of 18.

The Washington State Department of Transportation, Aviation Division suggested that, with regard to minimum age, in many cases the maturity level difference of an operator between ages 16 and 18 may be imperceptible. This commenter suggested lowering the minimum age to 16 would rule out the likelihood of willful underage violation and provide a legal path forward for younger operators. The commenter also pointed out that in many states a driver's permit can be obtained at age 15 and driver's license at age 16.

The Kansas Farm Bureau also argued that the added year available for academic use, education, and experience are positives for future UAS operators. DJI similarly noted that a lower age limit could increase academic use of small UAS because more high school age students could be operators. Also, commenters argued that a high age limit would inhibit curiosity and innovation among younger people who are exploring the capabilities of UAS.

The Colorado Cattlemen's Association did not object to the proposed minimum age requirement, but noted potential value in reducing the minimum age to 16 years old. The commenter noted that, while this approach would be a slight deviation from the current age requirement for non-commercial airman certificates, it would be consistent with the recognized lower risk associated with small UAS operations. The commenter also noted it would accommodate UAS operations for those beef producers who run family operations, many of which include older teenagers.

The FAA agrees that a certain level of maturity is required to operate any aircraft responsibly in the NAS. The FAA originally proposed a minimum age of 17 because it is consistent with existing FAA minimum age requirements for the sport pilot, recreational pilot, and private pilot airman certificates with an airplane or rotorcraft rating—the base-level certificates authorizing pilots to operate these two categories of aircraft while not under the supervision of an instructor. However, the FAA does not use a minimum age of 17 for all part 61 pilot certificates. As noted in the NPRM and by the commenters, the proposed minimum age of 17 is not consistent with existing FAA minimum age eligibility requirements for sport and private pilot airman certificates with a glider or balloon rating.

After further consideration, the FAA has determined that the risk posed by a small UAS operation is comparable to the risk posed by a glider or balloon operation. Balloon and glider operations generally take place during daytime visual meteorological conditions and are limited to a relatively confined geographical area. Balloon and glider aircraft also tend to be lighter and slower-moving aircraft, limiting the harm to people and property on the ground in the event of a mishap. Similarly, small UAS operations do not take place at night or in instrument meteorological conditions, and are operated in a limited geographical area as necessary for the remote pilot to maintain visual line of sight. Analysis of safety data for balloon and glider operations suggests that there is no significant difference in accident rates for 16-year-old pilots compared to 17- or 18-year-old pilots. Because the risk of a part 107 small UAS operation is comparable to the risk of a balloon or glider operation and because the minimum age for glider and balloon operations is 16,[131] the FAA will lower the minimum age in this rule to 16 years old.

The FAA also notes that a minimum age of 16 is consistent with its current practice of allowing airmen conducting a small UAS operation under a section 333 exemption to hold a sport or private pilot certificate with a glider or balloon rating. Although the FAA does not track the age of persons operating small unmanned aircraft under section 333 exemption grants, the agency is not aware of any specific safety concerns associated with 16-year-old private pilots or sport pilots operating small UAS. The FAA notes that lowering the minimum age to 16 will also enable additional small UAS agricultural operations, such as those described by the Colorado Cattlemen's Association.

Several commenters, including AIA, the Virginia Commonwealth University Honors Students, and the New Jersey Institute of Technology suggested that the minimum age should be no greater than 16. As noted in AIA comments,

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[129] *See* 14 CFR 61.103(a).

[130] *See* 14 CFR 61.83(b).

[131] 14 CFR 61.103(b) and § 61.305(a)(1).

AIA and others believe that a driver's license issued from within the U.S. should be considered as a prerequisite for a remote pilot certificate. The commenters recommended mimicking the process to obtain a driver's license, in which a person first obtains a learner's permit and then, following months of training and test-taking, obtains a license. This would enable 16-year-olds (depending on their State of residence) to obtain a certificate. According to the commenters, maintaining currency of the driver's license would also imply certain motor skills, vision, and a minimal level of medical fitness to operate UAS.

Several individual commenters said the minimum age should be lowered even further to 14 years old. The commenters pointed out that 14-year-olds are capable of having certain after-school jobs, and are allowed to operate a glider or balloon as a student pilot. Event 38 Unmanned Systems said that it sees no logical reason for a minimum age requirement, and that anyone who can pass the operator test should be allowed to fly a UAS. Two other commenters also said there should be no minimum age requirement.

The FAA disagrees with commenters who suggest that the minimum age be less than 16 because age 16 is the youngest age at which a person can be certificated to operate an aircraft independently in the NAS. Because a remote pilot certificate allows people to operate their small UAS independently, it is critical that those people possess the maturity necessary to operate in a safe manner. The FAA also disagrees with commenters who provided the example of a driver's license and a learner's permit as a justification for lowering the minimum age below 16. In most states, the driving privileges of people under the age of 16 are significantly limited compared to the privileges granted at age 18. According to the Governors Highway Safety Association, most states do not permit full driving privileges until 17 or 18 years of age. These privileges include high-risk situations such as the ability to drive unsupervised at night or with a certain number of passengers.[132]

The FAA also notes that driving a car does not use the same skills as operating a small UAS. For example, in order to successfully drive a car, drivers have to learn skills, such as parallel parking and making three-point turns, which have no applicability to small UAS operations. Requiring a U.S. driver's license as a prerequisite to obtaining a remote pilot certificate would impose the cost of acquiring those skills on people who do not currently possess a driver's license without a corresponding safety benefit. Accordingly, this rule will not require remote pilot certificate applicants to hold a driver's license.

In response to commenters who recommended a lower minimum age to enable academic uses, or the suggestion for an apprenticeship-like certificate for those under 18 years of age, the FAA notes that this is unnecessary because this rule allows an uncertificated person to manipulate the controls of a small UAS, provided that: (1) They are under the direct supervision of a certificated remote pilot in command; and (2) the remote pilot in command is capable of taking over controls at any time during the flight. The FAA also notes that, depending on the purpose of the operation, small UAS operations conducted by community groups and non-profit organizations may be considered recreation or hobby operations, which are not regulated under part 107 if conducted in accordance with Public Law 112–95, section 336.[133]

The Agricultural Technology Alliance, Illinois Farm Bureau, and GROWMARK suggested that the FAA treat age eligibility to operate a small UAS in the same manner as the operation of farm equipment—*i.e.*, allowing individual State labor laws to control. Though it did not explicitly advocate for the use of State labor laws to determine eligibility, Predesa pointed out that child labor laws would apply to minors participating in commercial operations. The commenter recommended the FAA consider mandating an adult visual observer to assist a minor with an operator certificate when operating a small UAS for commercial purposes. The commenter also recommended that the FAA consider mandating an adult visual observer to assist a minor with an operator certificate when operating a small UAS for education in a private program for fee, in a university setting, or in a public school system.

The FAA does not agree with the recommendation to adopt State labor laws to set the minimum age requirement. State laws are not uniform, and this could result in a patchwork of regulations that would apply uneven requirements depending on one's State of residence. The FAA also notes that not all operations conducted under part 107 will be commercial. For example, as discussed in section III.C.4 of this preamble, recreational small UAS operations that do not meet all of the criteria specified in Public Law 112–95, section 336 will be conducted under part 107.

The FAA disagrees with Predessa's suggestion that an adult visual observer should be mandated in order to assist a minor with a remote pilot certificate (*i.e.* someone between 16 and 18 years of age) when operating a small UAS. As discussed previously, the FAA currently allows 16-year-old pilots to operate, without supervision, glider and balloon manned aircraft and small UAS (under a section 333 exemption). The FAA has not observed an adverse effect on safety as a result of the pilot in those operations being 16 rather than 18 years old. Thus, while the FAA agrees that a visual observer enhances safety by providing additional situational awareness to the remote pilot, it is not necessary to mandate a visual observer based on the age of the remote pilot certificate holder or the type of operation being conducted.

Accordingly, the FAA has amended proposed § 107.61(a) to lower the minimum age to be eligible for a remote pilot certificate with a small UAS rating to 16 years old. The FAA notes, however, that an academic institution is permitted to establish its own (more restrictive) policies and procedures for operational small UAS training, which may include requiring the presence of adult visual observers for students who are younger than 18.

b. English Language Proficiency

In the NPRM, the FAA proposed to require that applicants for a part 107 airman certificate be able to read, speak, and understand the English language. These proposed English-language requirements would be consistent with all other airman certificates issued by the FAA, as well as the international standard for aircraft operations accepted by ICAO. However, the FAA also proposed an exception for people who are unable to meet one of the English-language requirements due to medical reasons. Such a person would be eligible for a certificate, but the FAA would be able to specify limitations on the certificate to account for that person's medical condition.

Five commenters expressed support for requiring airman-certificate applicants to be able to read, speak, and understand the English language. There were no comments opposing this aspect of the proposal. Accordingly, this rule will require that applicants for an airman certificate be able to read, speak, and understand the English language.

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[132] *http://www.ghsa.org/html/stateinfo/laws/license_laws.html*

[133] Section III.C.4 of this preamble contains further discussion of model aircraft operations.

Three commenters opposed the proposed exception to the English-language requirements. One of these commenters stated that there should be no exceptions to the English-language requirement, while another commenter stated that there should be no exception for persons whose medical reasons would preclude them from effectively communicating procedures or reading flight logs. A third commenter stated that a person who cannot speak English should not be permitted to operate anywhere near people on the ground because that person would be unable to communicate safety-relevant information to people in the vicinity of the operation.

Limiting the exception for the English-language requirements of this rule would impose a needless burden on airman-certificate applicants who have a medical condition. Specifically, if an applicant cannot read, speak, or understand the English language, the proposed exception would allow the FAA to impose restrictions on that applicant's certificate ensuring that the person's English-language inability does not adversely affect safety. For example, if an applicant is unable to communicate using speech, then the FAA may restrict that applicant's certificate to operations where speech is not necessary for the safe operation of a small UAS.

Restrictions issued under this provision will be specific to each applicant, and as such, the FAA cannot make the categorical statements suggested by the commenters as to what will or will not be permitted for applicants with a specific English-language inability. The FAA notes that its English-language regulations for other airman certificates have a similar exception for applicants who have a medical issue,[134] and the FAA has not observed any adverse safety effects from having this exception in the regulations.

Accordingly, this final rule will retain the proposed exception for people who are unable to meet one of the English language requirements due to a medical condition. 14 CFR 107.61(b). However, the FAA emphasizes that, as with other airmen, it may specify limitations on a person's airman certificate to ensure that the person's medical condition does not endanger the safety of the NAS.

c. No Airman Medical Certificate Required

For the reasons discussed below, this rule will not require an airman medical certificate but will prohibit a person from manipulating the flight controls of a small UAS or acting as a remote pilot in command or visual observer if he or she knows or has reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small UAS.

The FAA received approximately 115 comments from organizations and individuals on this subject. Several commenters stated than an airman medical certificate is not necessary to operate a UAS. Other commenters suggested adding a requirement for an airman medical certificate.

The FAA disagrees that a medical certificate should be required in this rule. With certain exceptions, the FAA currently requires an airman medical certificate for exercising the privileges of a student pilot certificate, a recreational pilot certificate, a private pilot certificate, a commercial pilot certificate, and an airline transport pilot certificate.[135] The primary reason for medical certification is to determine if the airman has a medical condition that is likely to manifest as subtle or sudden incapacitation that could cause a pilot to lose control of the aircraft, or impair the pilot's ability to "see and avoid."

Small UAS operations present a lower risk than manned operations to manned aircraft and non-participating people on the ground, especially because the operations do not involve any human beings onboard the aircraft who could be injured in the event of an accident. Additionally, unlike manned-aircraft operations, remote pilots and visual observers will be operating within a confined area of operation, subject to operational limitations intended to minimize the exposure of the small unmanned aircraft to manned aircraft in flight and people on the ground. Because of these operational limitations, traditional FAA medical certification is not warranted for remote pilots or visual observers.

The FAA also notes that the risks associated with pilot incapacitation are similar to the risks associated with loss of positive control. As discussed in that section, risks associated with loss of positive control are mitigated in this rule through: (1) Preflight inspection of the control links, (2) a speed limit of 87 knots, and (3) a prohibition on operations of small unmanned aircraft over people not directly participating in the operation. Just as § 107.49(a)(3) will require remote pilots to ensure that all links between ground station and the small unmanned aircraft are working properly, § 107.17 will require the remote pilot in command to abstain from small UAS operations if he or she knows or has reason to know that he or she has a physical or mental condition that would interfere with the safe operation of the flight.

Federal Airways & Airspace, ALPA, and several individual commenters expressed concern about the lack of a required vision exam. General Aviation Manufacturers Association and Aerospace Industries Association suggested that remote pilots hold a valid U.S. driver's license to ensure a basic eye exam.

The FAA considers the visual-line-of-sight requirement for the remote pilot, the person manipulating the flight controls of the small UAS (if that person is not the remote pilot), and the visual observer (if one is used) to be able to see the aircraft's direction, altitude, and attitude of flight to be preferable to a prescriptive vision standard. Even with normal vision, it is foreseeable that a small unmanned aircraft may be so small that the operational space must be reduced to meet the visual-line-of-sight requirements of § 107.31. Therefore, any demonstration of completing a vision exam would be less effective than this rule's visual-line-of-sight requirements, and as such, the FAA will not adopt a vision exam requirement in the final rule.

The FAA also disagrees with comments suggesting the FAA require a U.S. driver's license. According to the DOT Office of Highway Policy Information, 13 percent of the population aged 16 or older does not hold a state-issued driver's license.[136] As such, requiring a U.S. driver's license would create an undue burden for many remote pilots without an equivalent increase in safety because the skills necessary to obtain a driver's license are not the same as the skills needed to pilot a small UAS. Further, the FAA has historically allowed pilots of gliders and balloons to exercise the privileges of their pilot certificates without requiring a medical certificate or U.S. driver's license, and this practice has resulted in no adverse effects on the NAS.

The Golden Gate Bridge, Highway and Transportation District supported the proposed requirement to disqualify persons with known physical or mental conditions that could interfere with the safe operation of the aircraft. Conversely, DronSystems commented that it would be impossible to enforce a prohibition on operations if an operator knows he or she has a medical condition that could interfere with the safe operation of the small UAS.

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[134] *See, e.g.,* 14 CFR 61.83(c).

[135] 14 CFR 61.23(a).

[136] *See https://www.fhwa.dot.gov/policyinformation/pubs/hf/pl11028/chapter4.cfm* (stating that 87% of the population holds a driver's license).

The FAA notes that a similar regulatory provision already exists in part 61. Under § 61.53, a pilot certificate holder is obligated to abstain from acting as pilot in command during a period of medical deficiency. The requirement of § 61.53 applies regardless of whether or not a pilot certificate holder also holds a medical certificate.

One individual suggested that the FAA provide a list of disqualifying medical conditions.

The FAA has not established a list of disqualifying medical conditions under § 107.17 because there are a wide range of small UAS operations that could be affected differently by different medical conditions. For example, a person who is incapable of moving his fingers would not be able to safely operate a small UAS whose control station interface is manually manipulated with the fingers. However, that person may be able to safely operate a small UAS whose control station is operated through voice controls.

A person participating in a small UAS operation is responsible for knowing his or her physical and mental limitations and evaluating whether those limitations would allow him or her to safely participate in the specific small UAS operation that he or she is considering. If that person is unsure as to the limitations of his or her physical or mental condition, he or she should consult with a physician. The FAA emphasizes that those with a medical history or who are experiencing medical symptoms that would prevent them from safely participating in a small UAS operation or that raise a reasonable concern cannot claim to have no known medical conditions.

One commenter stated that residents of Alaska have a disproportionately high rate of "seasonal bipolar disorder" or "polar night-induced solipsism syndrome," and that Alaskans might therefore be disproportionately affected by this provision. This commenter suggests that the FAA remove "bipolar disorder—or at the least bipolar disorder and related conditions 'with seasonal pattern'—from the list of mental conditions which may prevent someone from being able to operate" a small UAS.

The FAA notes that the commenter is referring to a list of medical conditions enumerated in § 67.107(a)(3), § 67.207(a)(3), and § 67.307(a)(3), referring to a candidate for a first, second, or third class medical certificate to have no established medical history or clinical diagnosis of a bipolar disorder. However, as discussed previously, part 107 does not include a list of disqualifying medical conditions. A person with bipolar disorder would violate § 107.17 only if his or her bipolar disorder was such that it would interfere with the safe operation of a small UAS.

The FAA also notes that in the NPRM it proposed to require that an applicant for an airman certificate must submit a certified statement attesting to his or her physical and mental condition at the time of the application. However, upon further review, the FAA has decided to remove this provision from the rule because an applicant's medical condition at the time he or she submits his or her application for a remote pilot certificate may change prior to operation of the small UAS.

d. Flight Proficiency and Aeronautical Experience

Because of the significantly reduced risk associated with small UAS operations conducted under part 107, the NPRM proposed to not impose flight proficiency or aeronautical experience requirements on applicants seeking a small UAS airman certificate. However, the FAA invited comments on whether flight proficiency or aeronautical experience should be required. For the reasons discussed below, this rule will not require applicants for a remote pilot certificate with a small UAS rating to demonstrate flight proficiency or aeronautical experience.

Several commenters, including NBAA, Colorado Cattlemen's Association, and NetMoby, agreed with the NPRM that the FAA should not require small UAS operators to demonstrate their proficiency in operating a small UAS prior to obtaining an operator certificate. These commenters reasoned that requiring a proficiency test is unnecessary because small UAS are not very difficult to operate and the test could be cost prohibitive for some operators. NetMoby added that there will be a market incentive for manufacturers to ensure that future operators are capable of flying their UAS.

Other commenters, including the AFL–CIO, AIA, and NAAA, disagreed with the proposal and suggested that the FAA require small UAS operators to demonstrate their proficiency in operating a small UAS prior to obtaining a remote pilot certificate. Some of the commenters asserted that this would be consistent with testing requirements used for part 61 pilot certificates.

Aviation Management and Modovolate Aviation suggested requiring a practical test or demonstration of aeronautical knowledge for certain aircraft or flying conditions (*e.g.,* those weighing more than 4.4 pounds, operation beyond visual line-of-sight), but not for others (*e.g.,* micro UAS, operation in only Class G airspace). Virginia Commonwealth University Honors Students suggested that separate tests should be required for each type of small UAS.

As discussed in section III.E.3.a of this preamble, small UAS operations conducted under this rule will operate in a confined area of operation. As a result of this confined area and due to the very low weight of the small unmanned aircraft, small UAS operations conducted under part 107 will generally pose a very low risk as compared to manned aircraft. As such, flight proficiency and aeronautical experience requirements (which apply to part 61 pilots) are unnecessary for remote pilots of a small UAS.

Flight proficiency testing is also not necessary for small UAS operations because, unlike a manned aircraft pilot, the remote pilot of a small UAS can easily terminate flight at any point. The light weight and lack of people onboard the small unmanned aircraft provides the remote pilot of that aircraft with a multitude of safe landing options. The remote pilot also has the option to sacrifice the small unmanned aircraft because there are no people onboard who would be endangered by that action. Conversely, a manned aircraft can only land at a location that can safely accommodate its large weight. The landing of a manned aircraft must also be accomplished in a manner that does not endanger the people onboard the aircraft. Because of the ease with which the flight of a small unmanned aircraft can be terminated and because of the overall low risk posed by small UAS operations that will be conducted under part 107, this rule will not include practical testing or flight experience requirements for a remote pilot certificate.

The FAA notes, however, that certain operational restrictions of part 107, such as operations within visual line of sight, are waivable if the applicant can demonstrate that his or her operation can safely be conducted under the terms of a certificate of waiver. In processing a waiver, the FAA may request additional mitigations, such as a demonstration of remote pilot proficiency, to ensure that the operation can be conducted safely.

The Nez Perce Tribe requested that the FAA provide additional flexibility to small UAS operators by allowing them to qualify for an operator certificate either via a written test, a practical test, or a demonstration of aeronautical experience. In response, the FAA notes that practical testing, aeronautical experience, and knowledge testing measure different things. Knowledge testing determines whether an applicant has acquired proficiency in the areas of knowledge being tested. Practical testing and aeronautical experience determines the applicant's flight proficiency. Although practical testing and aeronautical experience may be used to assess some level of a person's knowledge, the aeronautical knowledge test is the method used to directly assess an applicant's knowledge. In this case, the FAA has determined that a remote pilot needs to have acquired the knowledge needed to safely operate a small UAS because small UAS operations will generally pose a very low risk as compared to manned aircraft. Thus, an aeronautical knowledge test is the appropriate vehicle to determine whether an applicant for a remote pilot certificate has acquired the necessary knowledge.

e. Formal Training

The NPRM did not propose to require formal training, but it invited comment on whether passage of an FAA-approved training course should be required either instead of or in addition to the aeronautical knowledge test. After reviewing the comments, the FAA has determined that it will not impose any specific training or flight instruction requirements for small UAS remote pilot certificate applicants.

Many commenters, including NAFI, NAAA, and A4A, stated that the FAA should require individuals to attend a training course before obtaining a small UAS operator certificate. NAFI asserted that an applicant may be able to pass an initial knowledge test through rote memorization and retain little useful information or application after passing the knowledge test. According to NAFI, the present FAA test management systems do not allow for the robust, multi-version testing that is truly able to test to the application level of learning. Commenters argued that training should encompass various topics and forms such as scenarios, multi-rotor aircraft, educational contact time from a flight instructor, and simulations.

Conversely, National Roofing Contractors Association, NBAA, Southern Company, Aerospace Industries Association, and Nez Perce Tribe argued that the FAA should not require a training course. Aviation Management suggested that the FAA make informational and training materials available online and also create online training programs, but should not require training courses. National Roofing Contractors Association, NRECA, and Team Rubicon suggested allowing industries to have tailored certification processes or training specific to their needs, or to allow agencies and organizations to conduct tailored in-house training.

The FAA took a risk-based approach to defining the airman certification requirements for small UAS remote pilots, and in light of the contained nature of operations, opted not to propose specific training, flight experience, or demonstration of proficiency in order to be eligible for a certificate. A remote pilot certificate applicant's knowledge of small UAS, as well as regulations concerning safe operations in the NAS, can adequately be evaluated through an initial and recurrent knowledge tests. A person who has acquired the pertinent knowledge will pass the knowledge tests while a person who has not done so will fail the test.

In response to commenters' concerns about rote memorization, the FAA notes that in addition to passing the initial knowledge test, remote pilot certificate holders will also have to pass a recurrent knowledge test every two years to ensure that they have retained the knowledge necessary to safely operate in the NAS. Further, remote pilot certificate holders will also be subject to continuing FAA oversight. The FAA emphasizes that under 49 U.S.C. 44709 and § 107.7(b), the FAA may reexamine a certificated remote pilot if it has sufficient reason to believe that the remote pilot may not be qualified to exercise the privileges of his or her certificate.[137] Because the qualification framework for the remote pilot certificate is based on aeronautical knowledge, a reexamination under section 44709 and § 107.7(b) would be limited to the certificate holder's aeronautical knowledge. The reexamination may be conducted using an oral or written knowledge test.

A prescriptive formal training requirement is not necessary in this rule. Instead, this rule will allow remote pilot certificate applicants to attain the necessary aeronautical knowledge through any number of different methods, including self-study, enrolling in a training seminar or online course, or through one-on-one instruction with a trainer familiar with small UAS operations and part 107. This performance-based approach is preferable because it will allow individuals to select a method of study that works best for them. These methods of study will then be validated by whether or not the individual is able to pass the knowledge test. As noted in OMB Circular A–4, performance-based standards are generally preferable in a regulation because they allow the regulated parties "to choose the most cost-effective methods for achieving the regulatory goal and create an incentive for innovative solutions." [138]

The FAA will publish Advisory Circulars to assist remote pilots in operating small UAS safely in the NAS. The FAA Safety Team (FAASTeam) will also host online training courses. These training courses could be used as one method of studying for the knowledge test. Lastly, because there is already a robust network of nearly 700 testing centers located throughout the country set up to administer FAA knowledge tests, the FAA has opted not to establish new standards for small UAS remote pilot testing centers.

f. General Requirement for Initial Aeronautical Knowledge Test

The NPRM proposed requiring applicants for a remote pilot airman certificate with a small UAS rating to pass an initial aeronautical knowledge test to demonstrate that they have sufficient aeronautical knowledge to safely operate a small UAS. The FAA adopts the provisions as proposed with three changes. First, as discussed in III.F.2.i below, the FAA exempts part 61 pilot certificate holders from the requirement to complete an initial knowledge test as long as they satisfy the flight review requirements of their part 61 pilot certificate and complete an online training course within the preceding 24 months. Second, as discussed in III.F.2.h below, the FAA will require that pilots with military experience operating unmanned aircraft pass an initial knowledge test in order to obtain a remote pilot certificate with small UAS rating, and pass a recurrent knowledge test every 24 months subsequent in order to continue to exercise the privileges of that certificate.

Many commenters, including National Association of State Aviation Officials, NAAA, ALPA, and NAMIC, supported the FAA's proposal to require an initial aeronautical knowledge test in order to operate a small UAS. Conversely, several commenters opposed the initial aeronautical knowledge test. Commenters argued that initial testing is "overkill" and the FAA should treat small UAS pilots like part

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[137] *See* FAA Order 8900.1, ch. 7, sec. 1 (providing guidance with regard to how the FAA exercises its reexamination authority).

[138] OMB Circular A–4 at 6.

103 ultralight vehicle pilots and not require airman certification or testing. The commenters further argued that all testing is unnecessary and inappropriate.

The FAA disagrees with the commenters who asked that the knowledge test be abolished. Title 49 U.S.C. 44703 requires the FAA to ensure that an airman certificate applicant is qualified and able to perform the duties related to the position to be authorized by the certificate.

Here, in order to meet its statutory obligation to determine that an applicant for a remote pilot certificate possesses the knowledge necessary to safely operate in the NAS, the FAA is requiring that those persons pass an initial aeronautical knowledge test. Knowledge testing is the most flexible and efficient means for ensuring that a remote pilot possesses the requisite knowledge to operate in the NAS because it allows the applicant to acquire the pertinent knowledge in whatever manner works best for him or her. The applicant can then take and pass the aeronautical knowledge test to verify that he or she has indeed acquired the pertinent areas of knowledge.

NAFI recommended that an applicant should be required to obtain an instructor endorsement to take the initial aeronautical knowledge test. SkyView Strategies suggested that to protect the public from a poorly prepared UAS operator who receives a passing grade but gets important questions wrong, the UAS operator should be required to present to a flight training instructor his or her written test results, noting areas where knowledge is lacking.

The FAA disagrees with the recommendation that an applicant should be required to obtain an instructor endorsement to take the initial aeronautical knowledge test. While an instructor endorsement is generally required for part 61 pilot certificates, the significantly reduced risk associated with small UAS operations conducted under part 107 would make this framework unduly burdensome in this case. Instead, a stand-alone knowledge test is sufficient to verify the qualification of the remote pilot certificate applicant.

Because the aeronautical knowledge test will determine whether an applicant possesses the knowledge needed to safely operate a small UAS, a separate flight instructor endorsement should not be required to take the knowledge test. The FAA also notes that the costs associated with failing and having to retake the knowledge test will provide an incentive to applicants to pick a method of study that maximizes the chance of them passing the aeronautical knowledge test on the first try.

The FAA also does not agree that a certificate applicant should be required to present to a flight instructor his or her knowledge test results for remedial training. The FAA maintains that if a candidate is "poorly prepared," then that person is unlikely to pass the knowledge test.

The University of Arkansas Division of Agriculture suggested that a more appropriate "aeronautical knowledge exam" needs to be developed with input from UAS users. It further suggested that the FAA should periodically revisit the scope of the aeronautical knowledge test as operational experience data increases.

FAA knowledge test banks are continuously updated to address changes to the industry, safety, and special emphasis areas. While the FAA responds to industry and user community feedback, the small UAS knowledge test bank is developed internally within the agency to protect the integrity of test.

g. General Requirement for Recurrent Aeronautical Knowledge Test

The FAA proposed that a certificated remote pilot must also pass a recurrent aeronautical knowledge test every 24 months. Like the flight review requirement specified in § 61.56, the recurrent knowledge test provides the opportunity for a remote pilot's aeronautical knowledge to be reevaluated on a periodic basis. The FAA adopts this provision as proposed, with one change. As discussed in III.F.2.i, the FAA exempts part 61 pilot certificate holders from the requirement to complete recurrent knowledge tests as long as they satisfy the flight review requirements of § 61.56 and complete an online training course every 24 months.

ALPA, AOPA, AUVSI and several other commenters supported the requirement for a recurrent knowledge test. Conversely, Colorado Cattlemen's Association and a few individual commenters argued that a recurrent knowledge test is unnecessary. The Colorado Cattlemen's Association explained that small UAS operations present a substantially reduced risk as compared to manned-aircraft operations. Therefore, the commenter argued, it is appropriate to impose different, and in some instances lesser, operational requirements.

The FAA disagrees with the notion that no periodic reevaluation of knowledge is necessary. Knowledge of rules, regulations, and operating principles erodes over time, particularly if the remote pilot is not required to recall such information on a frequent basis. This is a fundamental principle of airman certification, and it applies to all FAA-certificated airmen. For part 61 pilot certificate holders, the flight review, conducted under § 61.56, specifically requires "[a] review of the current general operating and flight rules of part 91" in addition to maneuvers necessary to safely exercise the privileges of the certificate. Likewise, the FAA considers a recurrent knowledge test to be an effective means of evaluating a remote pilot's retention of knowledge necessary to safely operate small unmanned aircraft in the NAS. Because of the reduced risk posed by small UAS, the FAA is not requiring remote pilots to demonstrate a minimum level of flight proficiency to a specific standard or recency of flight experience in order to exercise the privileges of their airman certificate.

Drone Labs suggested extending the time period between recurrent tests to 5 years, and/or making the test available online to ease recertification. Kansas Farm Bureau recommended a 6-year interval between recurrent tests, similar to the interval for renewal of a driver's license.

The FAA does not agree that the recurrent testing interval should be longer than two years. Unlike the privileges afforded by a driver's license, which are exercised on a frequent basis by most drivers, many holders of remote pilot certificates may only exercise their privileges occasionally or may not regularly conduct operations that apply all of the concepts tested on the aeronautical knowledge test. For example, a remote pilot in command may spend years never operating outside of Class G airspace, and then may move to a different location that requires him or her to begin conducting small UAS operations in Class D airspace. Based on experience with manned pilots, those persons who exercise the privileges of their certificate on an infrequent basis are likely to retain the knowledge for a shorter period of time than those who exercise the privileges of their certificate on a regular basis.

Further, as unmanned aircraft operations increase in the NAS, the FAA anticipates the possibility of further changes to rules and regulations. By requiring evaluation on a two-year cycle, the FAA is able to ensure that remote pilots are aware of the most recent changes to regulations affecting their operations.

The FAA acknowledges, however, the burden associated with in-person testing every two years. As such, the FAA intends to look at (in the *Operations of Small Unmanned Aircraft Over People* rule) alternative methods to further reduce this burden without sacrificing the safety benefits afforded by a two-year recurrent knowledge check.

h. Pilots With Military Experience

The NPRM proposed allowing pilots with military experience operating unmanned aircraft to take the recurrent knowledge test in lieu of the initial knowledge test in order to be eligible for an unmanned aircraft operator certificate with a small UAS rating. For the reasons discussed below, this rule will require pilots with military experience operating unmanned aircraft to comply with the initial and recurrent knowledge testing requirements discussed in the previous sections.

NBAA, Small UAV Coalition and Texas A&M University agreed with the proposed rule requiring only a recurrent knowledge test in lieu of the initial knowledge test to qualify for a UAS operator airman certificate. Prioria said that military UAS operators and OEM-certified UAS operators should be grandfathered in without the need to take an initial knowledge test because their prior operational experience should suffice. In addition, Aviation Model Code of Conduct Initiative, Boeing Commercial Airplanes, Small UAV Coalition, and others supported accepting existing pilot credentials, especially military pilot credentials, in lieu of requiring those pilots to take an initial knowledge test or obtain a separate small UAS certificate. ArgenTech Solutions suggested that FAA should put a time limit on when military experience is acceptable for taking the recurrent knowledge test.

In contrast, ALPA and others suggested that an initial knowledge test, rather than just a recurrent test, is appropriate for applicants with military experience flying UAS. ALPA noted that such pilots do not necessarily have experience operating in the NAS, and therefore cannot be assumed to be familiar with all the subject areas included in the initial test. ALPA also pointed to the wide variety of UAS used in the military and suggested that a given pilot's experience may not necessarily be relevant to the operation of a small UAS in the NAS. ALPA also stated that the FAA should review a military pilot's specific training, skills, and experience before determining what "supplemental training, knowledge testing, or skills demonstration" might be needed.

Similarly, one commenter asserted that experience operating military UAS is not relevant to the operation of a civil small UAS, and that therefore those with military experience should be subject to the same testing requirements as other applicants. Another individual echoed ALPA's concern that military operations are conducted almost exclusively in military airspace, not in the NAS. One commenter, while supporting an initial-test exemption for applicants with military experience, added that former military UAS pilots do not necessarily understand civil operations in the NAS.

Planehook Aviation, NOAA, DOD, and an individual commenter said that the prior military experience provision proposed in § 107.75 should apply to both military and non-military COA UAS operators. One commenter provided supporting reasoning stating that "[t]here are several non-military Federal agencies that have well established sUAS programs and, as is the case with NASA, they have decades of experience with sUAS and operating sUAS in the NAS." NOAA argued that there are no practical differences between NOAA pilots and military pilots because they are both trained in the same facilities. DOD raised a similar argument, asking that the rule recognize DOD civilian and contractor personnel that have a level of training equivalent to military personnel. One individual suggested that the FAA allow civilian operators with a minimum of 1,000 logged hours as operators of UAS for government and military agencies to qualify for taking the recurrent knowledge test instead of the initial test.

The FAA agrees with commenters who expressed concern about applicants obtaining a remote pilot certificate to operate civil small UAS without passing an initial knowledge test. The levels of training and certification for unmanned aircraft differ greatly between branches of the armed services, and therefore there is no consistent training the FAA can use as a comparison to its requirements in order to credit military UAS pilots. Further, many of the required knowledge areas for the part 107 initial knowledge test, such as airspace classification, airport operations, and radio communications, are not consistently covered in training across all branches of the U.S. military. Accordingly, at this time, this rule will not allow military UAS pilots to bypass the initial aeronautical knowledge test. This applies to NOAA UAS pilots as well, because, as NOAA pointed out, they are trained in the same military facilities.

The FAA notes, however, that in some cases, government and military UAS pilots are trained as pilots of manned aircraft, in which case they may qualify for a part 61 pilot certificate through military competency. Specifically, manned-aircraft military pilots are frequently able to qualify for a part 61 pilot certificate under § 61.73 without taking a practical test by providing specific documentation and passing a military competency knowledge test. Provided those pilots obtain a part 61 pilot certificate and meet the flight review and online training course requirements discussed in the next section, they may qualify for a remote pilot certificate with small UAS rating without having to take any UAS knowledge test.

i. Credit to Holders of Part 61 Pilot Certificates

For the reasons discussed below, this rule will allow part 61 pilot certificate holders (other than the holders of a student pilot certificate) with current flight reviews[139] to substitute an online training course for the aeronautical knowledge testing required by this rule.

Airborne Law Enforcement Association and Texas A&M University-Corpus Christi, suggested requiring only the recurrent knowledge test for part-61-certificated pilots. Numerous commenters also suggested that holders of part 61 airman certificates should be required to take only the recurrent knowledge test, not the initial knowledge test, or should be exempted entirely from knowledge-testing requirements. One commenter suggested that the holders of private, commercial, and ATP certificates who have operated UAS under exemptions be exempted from the initial knowledge test requirement. Another commented that non-military COA pilots should be permitted to take just the recurrent test, since the applicants will usually hold at least a private pilot certificate. One commenter stated that those applicants who hold part 61 pilot certificates should be required only to complete UAS-specific modules as part of the existing FAA Wings program. Another commenter stated that there should be a provision to enable existing small UAS pilots with a certain amount of logged PIC time to fly a small UAS without having to take a knowledge test.

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[139] Under § 61.56(c), no person may act as pilot in command of an aircraft unless, since the 24th calendar month before the month in which the person acts as pilot in command, he or she has completed a flight review with an authorized instructor in an aircraft for which that person is rated. The flight review must consist of at least one hour of ground training and one hour of flight training that includes the general operating and flight rules of part 91. 14 CFR 61.56(a).

The FAA agrees with commenters who suggested that requiring part-61-certificated pilots who satisfy the flight-review requirements of § 61.56 to take an initial or recurrent knowledge test is unduly burdensome. Through initial certification and subsequent flight reviews, a part-61-certificated airman is required to demonstrate knowledge of many of the topic areas tested on the UAS knowledge test. These areas include: Airspace classification and operating requirements, aviation weather sources, radio communication procedures, physiological effects of drugs and alcohol, aeronautical decision-making and judgment, and airport operations. Because a part 61 pilot certificate holder is evaluated on these areas of knowledge in the course of the part 61 certification and flight review process, reevaluating these areas of knowledge on the initial and recurrent knowledge tests conducted under part 107 would be needlessly duplicative.

However, there are UAS-specific areas of knowledge (discussed in section III.F.2.j of this preamble) that a part-61-certificated pilot may not be familiar with. Accordingly, instead of requiring part-61-certificated pilots who are current on their flight reviews to take the initial and recurrent knowledge tests, this rule will provide those pilots with the option to take an online training course focusing on UAS-specific areas of knowledge. Just as there is an initial and recurrent knowledge test, there will also be an initial and recurrent training course available to part 61 pilot certificate holders. Those certificate holders will be able to substitute the initial training course for the initial knowledge test and the recurrent training course for the recurrent knowledge test. To ensure that a certificate holder's UAS-specific knowledge does not become stale, this rule will include the requirement that a part 61 pilot certificate holder must pass either the recurrent training course or the recurrent knowledge test every 24 months.

The FAA emphasizes that the online training course option in lieu of taking the knowledge test will be available only to those part 61 pilot certificate holders who satisfy the flight review required by § 61.56. This is to ensure that the certificate holder's knowledge of general aeronautical concepts that are not included on the training course does not become stale. Part 61 pilot certificate holders who do not meet the flight review requirements of § 61.56 will be unable to substitute the online training course for the required aeronautical knowledge test. Thus, under § 107.63(a)(2), a part 61 pilot certificate holder seeking to substitute completion of the initial training course for the initial aeronautical knowledge test will have to present his or her logbook upon application for a remote pilot certificate with a small UAS rating to demonstrate that he or she has satisfied this requirement. The applicant will also have to present a certificate of completion showing that he or she has completed the initial online training course.

The FAA also notes that the above discussion does not apply to holders of a part 61 student pilot certificate. A person is not required to pass an aeronautical knowledge test, pass a practical (skills) test, or otherwise demonstrate aeronautical knowledge in order to obtain a student pilot certificate. Further, student pilot certificate holders who have received an endorsement for solo flight under § 61.87(b) are only required to demonstrate limited knowledge associated with conducting a specific solo flight. For these reasons, the option to take an online training course instead of an aeronautical knowledge test will not extend to student pilot certificate holders.

j. Areas of Knowledge on the Aeronautical Knowledge Tests and Training Courses for Part 61 Pilot Certificate Holders

The NPRM proposed that the initial aeronautical knowledge test would test the following areas of knowledge: (1) Regulations applicable to small UAS operations; (2) airspace classification and operating requirements, obstacle clearance requirements, and flight restrictions affecting small unmanned aircraft operation; (3) official sources of weather and effects of weather on small unmanned aircraft performance; (4) small UAS loading and performance; (5) emergency procedures; (6) crew resource management; (7) radio communication procedures; (8) determining the performance of small unmanned aircraft; (9) physiological effects of drugs and alcohol; (10) aeronautical decision-making and judgment; and (11) airport operations. The NPRM also proposed the following areas of knowledge for the recurrent knowledge test: (1) Regulations applicable to small UAS operations; (2) airspace classification and operating requirements, obstacle clearance requirements, and flight restrictions affecting small unmanned aircraft operation; (3) official sources of weather; (4) emergency procedures; (5) crew resource management; (6) aeronautical decision-making and judgment; and (7) airport operations.

For the reasons discussed below, this rule will remove obstacle clearance requirements and add maintenance and inspection procedures as areas of knowledge that will be tested on both the initial and recurrent aeronautical knowledge tests. Further, aviation weather sources will be removed from the recurrent aeronautical knowledge tests. Except for these changes, this rule will finalize all other areas of knowledge as proposed in the NPRM.

With regard to the initial and recurrent training courses for part 61 pilot certificate holders, those courses will only cover UAS-specific areas of knowledge that are not included in the training and testing required for a part 61 pilot certificate. Thus, the initial training course will cover: (1) Regulations applicable to small UAS operations; (2) small UAS loading and performance; (3) emergency procedures; (4) crew resource management; (5) determining the performance of the small unmanned aircraft; and (6) maintenance and inspection procedures. The recurrent training course will cover: (1) Regulations applicable to small UAS operations; (2) emergency procedures; (3) crew resource management; and (4) maintenance and inspection procedures.

i. Regulations Applicable to Small UAS

The NPRM proposed to include an area of knowledge on both the initial and recurrent knowledge tests that determines whether the test taker knows the regulations applicable to small UAS. By testing the applicant for an airman certificate on knowledge of applicable regulations, the initial and recurrent knowledge tests would ensure that the applicant understands what those regulations require and does not violate them due to ignorance.

The FAA did not receive any adverse comments on this aspect of its proposal, and as such, this rule will include regulations applicable to small UAS as an area of knowledge that is tested on both initial and recurrent aeronautical knowledge tests. This area of knowledge will also be included on the initial and recurrent training courses that can be taken by part 61 pilot certificate holders instead of a knowledge test because regulations applicable to a small UAS are a UAS-specific area of knowledge that is not included in the training and testing required for a part 61 pilot certificate.

ii. Airspace Classifications and Operating Requirements, and Flight Restrictions Affecting Small Unmanned Aircraft Operation

The NPRM also proposed testing (on both the initial and recurrent knowledge tests) knowledge of airspace classification and operating requirements, as well as knowledge of flight restrictions affecting small unmanned aircraft operation. The NPRM explained that part 107 would include airspace operating requirements, such as the requirement to obtain ATC permission prior to operating in controlled airspace, and in order to comply with those requirements, an airman would need to know how to determine the classification of the airspace in which he or she would like to operate. The NPRM also proposed to test knowledge of how to determine which areas of airspace are prohibited, restricted, or subject to a TFR.

Under the NPRM, this area of knowledge would also be included in the recurrent knowledge test because: (1) Airspace that the airman is familiar with could become reclassified over time; (2) the location of existing flight restrictions could change over time; and (3) some airmen may not regularly encounter these issues in their operations. For the reasons discussed below, this rule will include knowledge of airspace classification and operating requirements and knowledge of flight restrictions affecting small unmanned aircraft operation as an area of knowledge tested on both the initial and recurrent knowledge tests.

The California Agricultural Aircraft Association supported testing on how the airspace is managed, what the rules and regulations are, and how manned aircraft operate in the airspace. Aerius suggested that the knowledge test should include special use airspace, right-of-way rules, visual scanning, aeromedical factors (*e.g.*, the limitations of the human eye), and accident reporting. On the other hand, the Electronic Frontier Foundation asserted that airspace classification is not relevant for low altitude micro UAS flights far away from airports and should not be tested for airmen seeking to operate micro UAS.

The FAA declines to eliminate airspace classification as an area of knowledge tested for small UAS operations. As an initial matter, the FAA notes that this rule will not prohibit any small UAS (including micro UAS) from operating near airports. For UAS not operating near an airport, the FAA notes that controlled airspace can extend a significant distance away from an airport. For example, the surface area of Class B airspace can extend up to 8 nautical miles away from an airport. Additionally, airspace classification may change over time; uncontrolled (Class G) airspace may be changed to controlled airspace and vice versa. A remote pilot of any small UAS will need to have the ability to determine what class of airspace his or her small UAS operation will take place in to ensure that the operation complies with the airspace rules of part 107.

In response to Aerius, the FAA notes that special-use airspace will be covered under knowledge of flight restrictions, which will determine the test taker's knowledge of regulatory restrictions on small UAS flight imposed through means such as prohibited airspace or a TFR. Right-of-way rules, visual scanning, and accident reporting will be covered by the knowledge area of regulations applicable to small UAS operations because all of these concepts are codified in the operational regulations of part 107. Aeromedical factors will not specifically be included on the knowledge test, but the FAA may publish further guidance to remote pilots on topics such as aeromedical factors and visual scanning techniques.

AUVSI recommended that the FAA require more extensive knowledge testing than what was proposed for an operator desiring to fly in Class B, C, D, or E airspace, operate small UAS for commercial purposes, or operate small UAS beyond visual line of sight with risk-based approval. The commenter did not, however, specify what should be included in this more extensive testing, and as such, the FAA is unable to evaluate AUVSI's suggestion.

iii. Obstacle Clearance Requirements

The NPRM proposed to include obstacle clearance requirements as an area of knowledge to be tested on the initial knowledge test to ensure that an applicant for a remote pilot certificate knows how to avoid creating a collision hazard with a ground structure.

One commenter suggested removing this area of knowledge from the knowledge test because, according to the commenter, there are no obstacle clearance requirements in part 107, and therefore, there should be nothing to test. The FAA agrees with this comment and has removed obstacle clearance requirements as an area of knowledge to be tested on the initial knowledge test.

The FAA notes that although the test taker will not be tested on knowledge of obstacle clearance requirements, they will be tested for knowledge of regulations applicable to small UAS, including the requirements of §§ 107.19(c) and 107.23(a), which: (1) Prohibit operating a small unmanned aircraft in a careless or reckless manner so as to endanger the life or property of another; and (2) require the remote pilot in command to ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property in the event of loss of control of the aircraft. A small unmanned aircraft flown in a manner that creates a collision hazard with a ground structure may violate one or both of these regulations, especially if there are people near the ground structure who may be hurt as a result of the collision.

iv. Aviation Weather Sources and Effects of Weather on Small Unmanned Aircraft Performance

The NPRM proposed to test, on the initial and recurrent knowledge test, knowledge of official sources of weather. The NPRM also proposed to test on the initial knowledge test whether the applicant understands the effects of weather and micrometeorology (weather on a localized and small scale) on a small unmanned aircraft operation. The NPRM explained that knowledge of weather is necessary for the safe operation of a small unmanned aircraft because, due to the light weight of the small unmanned aircraft, weather could have a significant impact on the flight of the aircraft.

One commenter recommended the removal of "official" from "official weather sources," saying that operation of a UAS calls for assessment of "local" weather conditions, and, furthermore, that there are no clearly identified "official sources of weather." Aviation Management suggested that official sources of weather be excluded from the recurrent knowledge test.

The FAA agrees with the commenter that there are no specific "official sources of weather," and has removed that terminology from this rule. However, the FAA emphasizes that there are several sources of aviation weather useful to remote pilots. Accordingly, remote pilots will be required to be familiar with aviation weather products such as the ones provided by the National Weather Service through Flight Service Stations, Direct User Access Terminal Systems (DUATS), and/or Flight Information Services-Broadcast (FIS–B).[140] While this rule does not require the use of those sources of weather for planning flights, aviation weather sources could be a valuable resource for remote pilots that choose to use them. For example, a remote pilot conducting an operation in an area with quickly changing weather may wish to access weather information from an aviation weather source for the most up-to-date weather data to ensure that the small UAS operation will comply with the minimum visibility and cloud clearance requirements of § 107.51. The FAA notes that aviation weather sources include weather data that can be used to evaluate local weather conditions.[141] Because there is no requirement for remote pilots to use aviation weather products on an ongoing basis, the FAA has removed this area of knowledge from the recurrent aeronautical knowledge test.

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[140] *See* Aeronautical Information Manual, ch. 1, sec. 1.

Accordingly, this rule will include knowledge of aviation weather sources and the effects of weather on small unmanned aircraft performance on the initial knowledge test. Additionally, this rule will include knowledge of the effects of weather on small unmanned aircraft performance as an area of knowledge on the initial training course available to part 61 pilot certificate holders because this is a UAS-specific area of knowledge that is not included in the training and testing required for a part 61 pilot certificate. The training course will not include knowledge of aviation weather sources because that is not a UAS-specific area of knowledge.

v. Small UAS Loading and Performance

The NPRM proposed to include weight and balance as an area of knowledge to be tested on the initial knowledge test to ensure that an applicant for a remote pilot certificate knows how to calculate the weight and balance of a small unmanned aircraft to determine impacts on performance. The NPRM noted that in order to operate safely, operators need an understanding of some fundamental aircraft performance issues, including load balancing and weight distribution as well as available power for the operation.

University of Arkansas Division of Agriculture suggested that the FAA's proposal suggests a lack of understanding by the FAA of these lightweight aircraft. The commenter added that when they place a battery or camera on their aircraft, it is immediately obvious if something is not balanced.

While the FAA agrees that in some circumstances the effect certain loads may have on the weight, balance, and performance of the aircraft may be obvious—such as adding a five pound weight to one side of a 0.5 pound small unmanned aircraft—other weight distributions and how they affect the balance of the aircraft may be more difficult to surmise. For example, it may not be intuitive for a remote pilot to determine the effect a half-pound battery will have when added to a forty-pound aircraft. Additionally, a remote pilot needs to understand the effect that the added weight will have on the aircraft's operation over time. For example, while a small unmanned aircraft may be balanced for the first few flights after a weight is added, that weight may influence the aircraft over time such that during later flights the aircraft is no longer balanced and no longer flying safely.

For these reasons, the FAA will include a section on the initial knowledge test ensuring that a remote pilot applicant understands how to calculate the weight and balance of a small unmanned aircraft and the resulting impacts on performance. Because small unmanned aircraft loading is a UAS-specific area of knowledge, the FAA will also include it on the initial training course that part 61 pilot certificate holders can take in place of the knowledge test.

vi. Emergency Procedures

The NPRM noted that a small UAS airman may have to deal with an emergency situation during a small UAS operation. As such, the NPRM proposed to include an area of knowledge on the initial knowledge test that would determine whether the applicant knows how to properly respond to an emergency. The NPRM also proposed to include knowledge of emergency procedures on the recurrent knowledge test because emergency situations will likely be infrequent and as such, a certificate holder's knowledge of emergency procedures may become stale over time. The FAA did not receive adverse comments on including emergency procedures on the initial knowledge test, and as such, this area of knowledge will be included on the initial knowledge test.

Turning to the recurrent knowledge test, Aviation Management recommended that the FAA remove emergency procedures as an area of knowledge covered on that test. The FAA declines to remove emergency procedures from the recurrent knowledge test. As discussed in the NPRM, emergency situations will likely arise infrequently, and as such, a remote pilot's knowledge of emergency procedures may become stale over time. Accordingly, including this area of knowledge on the recurrent knowledge test will ensure that the remote pilot retains the knowledge of how to properly respond to an emergency.

Because this area of knowledge is UAS-specific, it will also be included on the initial and recurrent training courses that can be taken by part 61 pilot certificate holders instead of an initial or recurrent knowledge test.

vii. Crew Resource Management

The NPRM proposed to include crew resource management as an area of knowledge to be tested on the initial and recurrent knowledge tests to ensure that an applicant for a remote pilot certificate knows how to function in a team environment, such as when visual observers are used to assist a remote pilot. In those circumstances, the remote pilot would be in charge of those observers and therefore need an understanding of crew resource management.

Several commenters, including the Small UAV Coalition, Princeton University, and the Electronic Frontier Foundation, argued that crew resource management may not be relevant for all small UAS operations and, as such, should be removed from the knowledge test. Princeton University added that crew resource management would be an irrelevant area of knowledge for student operators who will be operating the aircraft at a low altitude, for a limited distance, on university property, and under the direct supervision of a faculty member. Electronic Frontier Foundation stated that this area of knowledge is irrelevant for micro UAS operations.

One commenter suggested removal of crew resource management stating it is "overkill" and is really just referring to possible communications between the pilot and the visual observer. If kept, the commenter suggested modifying it to "Crew resource management as it may pertain to operation of a small unmanned aircraft system."

The FAA acknowledges that not all small UAS operations will utilize a visual observer or more than one manipulator of the controls of the small unmanned aircraft. However, the FAA anticipates that many remote pilots operating under part 107 will likely use a visual observer or oversee other individuals that may manipulate the controls of the small unmanned aircraft. In order to allow flexibility for certificated remote pilots to determine whether or not to use a visual observer or oversee other individuals manipulating the controls of the small unmanned aircraft, the FAA must ensure that an applicant for a remote pilot certificate is able to function in a team environment and maximize team performance. This includes situational awareness, proper allocation of tasks to individuals, avoidance of work overloads in self and in others, and effectively communicating with other members of the crew such as visual observers and individuals manipulating the controls of a small UAS.

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[141] Additional guidance on aviation weather for pilots can be found in AC 00–6.

The scenario Princeton University provided in its comment is precisely the type of scenario that would require a certificated remote pilot in command to have an understanding of crew resource management. The remote pilot in command in Princeton University's scenario would be supervising a student who is manipulating the controls of the small unmanned aircraft. Therefore, the remote pilot in command in that scenario would need to know how to effectively communicate and guide his or her crew (the student). In response to Electronic Frontier Foundation, the FAA notes that even remote pilots operating smaller UAS may choose to use a visual observer or supervise other manipulators of the controls.

It is not necessary to change the title of this area of knowledge because crew resource management correctly captures what this area of knowledge will cover. The FAA also notes that this rule will include crew resource management as an area of knowledge on the initial and recurrent training courses available to part 61 pilot certificate holders because this is a UAS-specific area of knowledge.

viii. Determining the Performance of the Small Unmanned Aircraft

The NPRM proposed to include an area of knowledge on the initial aeronautical knowledge test to ensure that an applicant knows how to determine the performance of the small unmanned aircraft. Aviation Management suggested that this area of knowledge be excluded from the initial knowledge test because, the commenter argued, this knowledge is unnecessary for all small UAS operations.

The FAA will retain determining the performance of the small unmanned aircraft as an area of knowledge on the initial knowledge test. As discussed in section III.E.6.a.i of this preamble, the remote pilot in command will be required to conduct a preflight assessment of the area of operation and ensure that the small unmanned aircraft will pose no undue hazard to other aircraft, people, or property if there is a loss of positive control. In order to be able to do that, the remote pilot in command will need to be able to assess how a small unmanned aircraft will perform in a given operating environment. This area of knowledge will determine whether an applicant for a remote pilot certificate has acquired the knowledge necessary to conduct this assessment.

This rule will also include this area of knowledge on the initial training course that can be taken by part 61 pilot certificate holders instead of an initial knowledge test because it is a UAS-specific area of knowledge.

ix. Physiological Effects of Drugs and Alcohol

The NPRM proposed to include the physiological effects of drugs and alcohol as an area of knowledge covered by the initial knowledge test. The Electronic Frontier Foundation argued that knowledge of the effects of drugs and alcohol is irrelevant for micro UAS operations and should not be tested for pilots of a micro UAS.

The FAA disagrees. As explained in the NPRM, there are many prescription and over-the-counter medications that can significantly reduce an individual's cognitive ability to process and react to events that are happening around him or her. This can lead to impaired decision-making, which could adversely affect the safety of any small UAS operation. Accordingly, the initial aeronautical knowledge test will include an area of knowledge to determine whether the applicant understands how drugs and alcohol can impact his or her ability to safely operate a small UAS.

x. Aeronautical Decision-Making and Judgment

The NPRM proposed to include aeronautical decision-making and judgment as an area of knowledge tested on the initial and recurrent knowledge tests. Aviation Management suggested that this area of knowledge be excluded from the knowledge tests because this knowledge is unnecessary for all small UAS operations.

The FAA disagrees. As discussed in the NPRM, even though small unmanned aircraft will be limited to a relatively low altitude by the provisions of this rule, they will still share the airspace with some manned-aircraft operations. To safely share the airspace, a remote pilot in command will need to understand the aeronautical decision-making and judgment that manned aircraft pilots engage in so that he or she can anticipate how a manned aircraft will react to the small unmanned aircraft. Accordingly, this rule will retain aeronautical decision-making and judgment as an area of knowledge covered on the initial and recurrent knowledge tests.

xi. Airport Operations

Noting that some small UAS operations could be conducted near an airport, the NPRM proposed to include airport operations as an area of knowledge tested on the initial and recurrent knowledge tests.

Several commenters, including the Small UAV Coalition, Princeton University, and Predesa, argued that airport operations may not be relevant to all small UAS operations, and as such, should be removed from the knowledge tests. The Electronic Frontier Foundation argued that this area of knowledge is "clearly irrelevant" for micro UAS flights conducted far away from airports.

There are over 5,000 public use airports in the United States. As such, the FAA expects that a number of small UAS operations may take place near an airport. The FAA also expects that there could be instances where a small unmanned aircraft unexpectedly ends up flying near an airport due to adverse conditions, such as unexpectedly strong winds that carry the aircraft toward the airport. In those instances, the remote pilot in command will need to have an understanding of airport operations so that he or she knows what actions to take to ensure that the small unmanned aircraft does not interfere with airport operations or traffic patterns. Accordingly, this rule will retain airport operations as an area of knowledge tested on the initial and recurrent knowledge tests.

xii. Radio Communication Procedures

Finally, the NPRM proposed to include radio communication procedures as an area of knowledge covered on the initial aeronautical knowledge test.

Several commenters, including Princeton University, Predesa, and Aviation Management, argued that radio communications may not be relevant for all small UAS operations and as such, should be removed from the knowledge test. Predesa suggested that the FAA design a new "Class G-only unmanned aircraft operator certificate with a small UAS rating" that, among other things, does not include radio communication procedures as an area of knowledge that is tested on the knowledge test. One commenter recommended removal of "radio communication procedures" because there is no requirement for radio communications of any sort with small UAS operations.

As discussed earlier, the FAA expects that a number of small UAS operations will take place near an airport. That is why § 107.43 prohibits a small unmanned aircraft from interfering with airport operations or traffic patterns. Understanding radio communication procedures will assist a remote pilot in command operating near a Class G airport in complying with this requirement. Understanding radio communication procedures will assist a remote pilot in command operating near a Class G airport in complying with this requirement if that pilot chooses to use a radio to aid in his or her situational awareness of manned aircraft operating nearby. As described in section 4–1–9 of the Aeronautical Information Manual, manned-aircraft pilots may broadcast their position or intended flight activity or ground operation on the designated Common Traffic Advisory Frequency (CTAF). This procedure is used primarily at airports that do not have an airport traffic control tower, or have a control tower that is not in operation. Pilots of radio-equipped aircraft use standard phraseology to announce their identification, location, altitude, and intended course of action. Self-announcing for arriving aircraft generally begins within 10 nautical miles of the airport and continues until the aircraft is clear of runways and taxiways. Aircraft on the ground intending to depart will begin to make position reports prior to entry of the runway or taxiway and continue until departing the traffic pattern. Aircraft remaining in the pattern make position reports on each leg of the traffic pattern.

Thus, knowledge of radio communication procedures will provide a remote pilot in command with the ability to utilize a valuable resource, CTAF, to help determine the position of nearby manned aircraft. As such, this rule will retain this area of knowledge on the initial aeronautical knowledge test.

xiii. Other Areas of Knowledge Suggested by the Commenters

The NPRM invited comment on whether additional areas of knowledge should be tested on the initial and recurrent knowledge tests. In response, the FAA received comments listing additional areas of knowledge that commenters would like to see on the knowledge tests. For the reasons discussed below, the FAA will add a section on maintenance and inspection to the initial and recurrent knowledge tests and the online training courses. The FAA will not add any other areas of knowledge to the knowledge tests or training courses.

The National Transportation Safety Board (NTSB) suggested that the test content should include awareness of lost-link failsafe procedures, operator development, use of maintenance and inspection steps and guides, and the characteristics and proper handling of lithium batteries. The NTSB referred to an April 2006 accident involving a U.S. Customs and Border Protection unmanned aircraft and encouraged the FAA to review its recommendations and supporting information stemming from that accident for potential lessons learned when developing guidance material and specific content for the written knowledge tests outlined in proposed part 107.

The FAA notes that topics associated with lost-link failsafe procedures will be covered by the area of knowledge testing an applicant's understanding of the applicable small UAS regulations. With regard to maintenance and inspection, the FAA has taken action by adding maintenance and inspection knowledge test topic area requirements to the initial and recurrent knowledge tests. The addition of maintenance and inspection knowledge test topics will consist of small UAS basic maintenance and inspection knowledge that is common to all small UAS regardless of complexity. An understanding of maintenance and inspection issues will ensure that remote pilots are familiar with how to identify when a small unmanned aircraft is not safe to operate, and how to maintain a small unmanned aircraft to mitigate the possibility of aircraft failure during flight. Although this area of knowledge will not cover every possible inspection and maintenance method, it will provide a baseline of knowledge that will be useful to all small UAS remote pilots.

The FAA disagrees with NTSB's recommendation that the knowledge test include a topic on the characteristics and proper handling of lithium batteries. Under § 107.36, small UAS are prohibited from carriage of hazardous materials. When installed in the aircraft for use as a power source (as opposed to carriage of spares or cargo), lithium batteries are not considered hazardous material.[142]

NOAA suggested that the knowledge test include questions relating to protecting and operating in the context of wildlife. The Ventura Audubon Society also suggested that the FAA test an applicant's understanding of Federal and State wildlife protection laws.

The FAA is required by statute to issue an airman certificate to an individual when the Administrator finds that the individual is qualified and physically able to safely perform the duties authorized by the certificate. *See* 49 U.S.C. 44703(a) (stating that the Administrator "shall issue" an airman certificate to an individual who is qualified and physically capable). Therefore, the FAA cannot deny or delay the issuance of an airman certificate if an applicant has demonstrated that he or she is qualified and physically able to safely perform the duties authorized by the certificate. In this case, a remote pilot certificate with small UAS rating authorizes the holder to operate a small UAS safely in the NAS. Thus, under § 44703(a), the FAA is required to issue an airman certificate to an individual who has demonstrated an ability to safely operate a small UAS, and may not require that individual to also demonstrate an understanding of Federal and State wildlife protection laws.

The FAA emphasizes, however, that a small UAS operation may be subject to other legal requirements independently of this rule. A remote pilot in command is responsible for complying with all of his or her legal obligations and should thus have a proper understanding of wildlife protection laws in order to comply with the pertinent statutes and regulations.

Drone User Group Network suggested the following topics for the knowledge test: the concepts of lift, weight, thrust and drag, Bernoulli's principle, weight and balance, weather, situational awareness, safety in preflight, in flight and post flight, battery theory, radio frequency theory, electrical theory, understanding flight modes, fail-safes, and aircraft types and limitations.

The FAA notes that weight and balance, weather, and preflight requirements will be tested under § 107.73. The FAA agrees with the commenter that technical topics such as principles of flight, aerodynamics, and electrical theory may enhance the knowledge and technical understanding of the remote pilot. However, these topics are not critical subject areas for safe operation of small UAS. The FAA includes many of these topics in the curriculum of part 61 knowledge testing because they are critical knowledge areas for persons operating an aircraft with passengers over populated areas that may need to respond to an emergency resulting from engine failure, unexpected weather, or onboard fire. Conversely, small UAS operations take place in a contained area in a light-weight aircraft that has no people onboard, so these topics are not applicable to the same extent as they are to a manned-aircraft operation. However, the remote pilot in command should familiarize him or herself with all of the necessary information to be able to fly the unmanned aircraft without causing damage to the aircraft.

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[142] *See* 49 CFR 175.8(a)(2).

Southwest Airlines Pilots' Association encouraged the FAA to require that operators be knowledgeable about Safety Management Systems (SMS) and the Aviation Safety Reporting System (ASRS), which could be used to collect data to support a risk managed growth of the industry and the integration into the NAS.

The FAA disagrees that SMS and ASRS systems should be covered on the knowledge tests. Participation in a formal SMS program is currently required only for part 121 operations, which are the largest and most complex manned-aircraft operations regulated by the FAA. Requiring small UAS to participate in this program would not be justified considering the fact that the FAA does not require non-part-121 manned-aircraft operations to have an SMS. Similarly, the FAA will not require testing on ASRS knowledge because ASRS is not currently required knowledge for part 61 pilot certificate holders.

k. Administration of the Knowledge Tests and Training Courses

This section discusses how the initial and recurrent knowledge tests and online training courses will be administered under this rule. Specifically, this section addresses: (1) The location at which a knowledge test can be taken; (2) the prohibition on cheating and engaging in unauthorized conduct during a knowledge test; (3) the identification of the test taker; and (4) retesting after failing a knowledge test.

i. Location of the Knowledge Test and Online Option for Training Course

Knowledge tests currently administered to prospective pilots under 14 CFR part 61 are created by the FAA and administered by knowledge testing centers. A knowledge testing center is a private company that has been approved to administer airman knowledge tests. These centers are overseen by the FAA to ensure that the testing center meets FAA requirements. The NPRM proposed to apply this existing framework to knowledge testing under part 107. The NPRM also noted that the FAA considered an online test-taking option, but ultimately rejected this option due to concerns about cheating and the protection of personally identifiable information (PII). The NPRM invited comments on whether online testing should be permitted under this rule.

For the reasons discussed below, the FAA will finalize this provision as proposed with one exception. That exception is that the training course available to part 61 pilot certificate holders in place of an aeronautical knowledge test will be administered online rather than at a knowledge testing center.

Texas A&M University-Corpus Christi/LSUASC suggested that the FAA UAS test sites should be involved in the training, testing, and certification processes. NRECA suggested allowing NRECA members to administer the tests for their employees. NRECA asserted that its members already have extensive experience with training and testing, and are well equipped to administer the testing contemplated in this rule without compromising the integrity of such tests.

Additionally, the Small UAV Coalition suggested that DPEs, ACRs, CFIs, or other persons authorized by the Administrator be authorized to conduct the aeronautical test and issue the certificate. These commenters generally noted that these approaches would increase efficiency regarding the issuance of unmanned aircraft operator certificates with a small UAS rating.

The Property Drone Consortium suggested that another way to increase efficiency would be for the FAA to allow certain industries to conduct internal training that would satisfy the requirement for applicants to pass an initial aeronautical knowledge test given by an FAA knowledge testing center. Property Drone Consortium and several individuals also suggested that the FAA begin planning for the establishment of testing centers so that there will be adequate capacity for operators to take the initial small UAS operator certification test.

After considering the comments, the FAA has decided to use its existing system of knowledge testing centers to administer the aeronautical knowledge tests. There are currently about 700 knowledge testing centers spread throughout the country. The FAA anticipates that this system has adequate capacity for individuals to take the initial aeronautical knowledge test. An updated list of commercial testing center locations and contact information may be accessed at: *https://www.faa.gov/training_testing/testing/media/test_centers.pdf*.

The FAA also has the ability to designate additional knowledge testing centers if demand for the knowledge test exceeds existing capacity and the existing knowledge testing centers become incapable of meeting the increased demand, provided the FAA also has the ability to provide adequate oversight. Airman Knowledge Testing Organization Designation Authorization Holders are designated to administer airman knowledge tests under the authority of FAA Orders 8100.15, 8080.6G and 49 U.S.C. 44702(d). To ensure FAA jurisdictional and surveillance oversight, only companies, schools, universities, or other organizations that meet the requirements of this order may be eligible for designation. The FAA also notes that there is nothing in the final rule that prohibits industries from conducting internal training for employees to prepare them for the initial or recurrent aeronautical knowledge test.

A number of commenters, including the Professional Society of Drone Journalists, AUVSI, and NBAA, supported allowing applicants to take both the initial and recurrent aeronautical knowledge tests online. NRECA, Cherokee Nation Technologies, and the Nez Perce Tribe pointed to the benefits of online testing to applicants living in rural locations, who would otherwise have to travel great distances to take the knowledge test in-person.

Other commenters, including AOPA, News Media Coalition, and New Hampshire DOT, supported online testing for recurrent aeronautical knowledge tests. Associated Builders and Contractors also recommended allowing an online option for recurrent test takers, but said it should be supervised. The commenter asserted that the FAA missed a number of factors when looking at the economic impact on businesses and individuals of allowing online testing.

Several commenters addressed the FAA's concerns about positive identification of applications and the need to protect applicants' personally identifiable information (PII). NetMoby pointed out that there are numerous Federal judicial filing systems which protect PII, and recommended the FAA use these techniques to protect PII in online testing. The Colorado Cattlemen's Association said the FAA can address issues related to positive identification and PII protection through a combination of existing driver's license databases and existing measures used by the FAA to protect PII submitted by other applicants and certificated airmen. Planehook Aviation stated that ensuring the identity of test-takers in person using current "identification credential fidelity methods" is just as subject to falsification as pre-online testing identification verification. Airgon suggested that FAA could draw from the experience of online universities to verify an applicant's identity for purposes of an online exam. The commenter noted that such techniques include posing challenge questions with personal information about a student, using video capture to record the student during the exam, using biometrics such as voice recognition, and using video proctoring, which connects a student to a live proctor who verifies the student's identity.

Other commenters addressed the FAA's concern that online test-takers could cheat on the test. Two individual commenters asserted that many cities allow drivers to take defensive driving courses online, and asserted that if this method is sufficient for defensive driving courses, it is more than sufficient for small UAS testing. Airgon asserted that there are software programs, such as Examsoft, that lock an examinee's computer, preventing the examinee from opening other applications during a test. The commenter also noted that companies are developing software that can track an examinee's keystrokes and other activities during the test, such as opening another browser window, talking on a phone, talking to someone else in the room, or using a book. The commenter also suggested the FAA could impose time limits on the test to limit the time available for an examinee to look up information covered on the test. NRECA argued that the risk of cheating is low and can be managed by requiring "an appropriately worded sworn certification by the test-taker."

Several commenters, including the National Association of State Aviation Officials, NAFI, and Aerius, opposed online aeronautical knowledge testing. Those commenters generally opposed online testing for security purposes (*i.e.*, difficulty of ensuring test-taker identity and securing test-taker PII) and because of concerns about cheating. Modovolate pointed out that it is not clear how online testing would avoid impermissible reference to materials.

Because an applicant for a remote pilot certificate with small UAS rating is not required to pass a practical test, knowledge testing is the only way for the FAA to determine that a remote pilot has the requisite aeronautical knowledge to operate safely in the NAS. Therefore, it is imperative that the testing methodology being used assures that knowledge is demonstrated. The FAA is still evaluating whether online testing technologies can provide adequate proctoring of a test to ensure, among other things, that the test-taker is not taking the test for someone else or using reference material or other unapproved aids to help answer the test questions. Concerns with online testing are not limited to cheating. Because the knowledge test questions are pulled from a test bank with a finite number of questions, limiting access to that database to knowledge testing centers ensures the continued security and integrity of the test questions.

At this time, the FAA is aware of no other Federal agency that has successfully implemented an online knowledge testing system for imparting privileges that can directly affect the safety of nonparticipating persons or property. The FAA acknowledges comments pointing out that there are States that either have or are considering online testing for driver's tests. However, in all cases, States require an in-person practical driving test for issuing a driver's license, which helps address concerns with online testing. Thus, the States' online drivers' license testing model is not directly analogous to the framework of this rule.

The FAA notes, however, that the above concerns do not apply as strongly to UAS-specific training for holders of part 61 pilot certificates other than student pilot. These part 61 pilot certificate holders have already passed extensive testing and training requirements on general aeronautical knowledge and have gone through the positive identification process in order to obtain a part 61 pilot certificate. While part 61 pilot certificate holders may not have UAS-specific knowledge (hence the requirement for the training course), the UAS-specific knowledge is simply an application of general aeronautical knowledge principles to a specific type of operation. Because part 61 pilot certificate holders have already demonstrated proficiency in areas of general aeronautical knowledge, administering the training course online would not pose a problem for this population of remote pilot certificate applicants.

The FAA acknowledges that technology in this area could evolve to address its concerns with online testing (discussed earlier). The FAA also notes that online testing would, if implemented, significantly reduce the costs associated with part 107 by eliminating the travel costs incurred as a result of a person having to physically travel to a knowledge testing center. As such, the FAA will consider allowing the initial and recurrent knowledge tests to be taken online if an online system becomes available that allows a knowledge test to be administered securely (with controls in place to prevent cheating) and that allows the test taker to be positively identified without an in-person interaction.

ii. Cheating or Engaging in Unauthorized Conduct

To ensure that the aeronautical knowledge test is properly administered, the NPRM proposed to prohibit an applicant from cheating or engaging in other unauthorized conduct during the knowledge test. This would include: (1) Copying or intentionally removing a knowledge test; (2) giving a copy of a knowledge test to another applicant or receiving a copy of the knowledge test from another applicant; (3) giving or receiving unauthorized assistance while the knowledge test is being administered; (4) taking any part of a knowledge test on behalf of another person; (5) being represented by or representing another person for a knowledge test; and (6) using any material not specifically authorized by the FAA while taking a knowledge test. Cheating or engaging in unauthorized conduct during a knowledge test would be grounds for suspending or revoking the certificate or denying an application for a certificate. In addition, a person who engages in unauthorized conduct would be prohibited from applying for a certificate or taking a knowledge test for a period of one year after the date of the unauthorized conduct.

The FAA did not receive any adverse comments on this component of the proposed rule. Accordingly, this rule will finalize the cheating or engaging-in-unauthorized-conduct provisions of the NPRM as proposed. 14 CFR 107.69.

iii. Identification of the Test-Taker

The NPRM proposed to ensure that an applicant who is about to take the knowledge test is properly identified by requiring the applicant to present identification to the knowledge testing center prior to taking the knowledge test. This identification would have to include the applicant's: (1) Photograph; (2) signature; (3) date of birth, which shows the applicant meets or will meet the age requirement for a remote pilot certificate; and (4) the applicant's current residential address. For the reasons discussed below, this rule will finalize this aspect of the NPRM as proposed.

An individual commenter questioned an apparent contradiction in the NPRM, which would allow knowledge testing centers to verify an applicant's identification for the purposes of administering a knowledge test but would prohibit knowledge testing centers from verifying identification for the purposes of submitting an airman application. The commenter added that if the goal of this rule is to achieve the least burdensome process, then knowledge testing centers should be permitted to verify a person's identification for both testing and application submission to the FAA.

The FAA acknowledges the positive identification conducted by the knowledge testing centers, and has determined that there is no need to repeatedly identify a person who has already been positively identified for the purposes of taking the knowledge test. Accordingly, as discussed later in section III.F.l, this rule will allow an applicant to submit his or her remote pilot application without having to be positively identified a second time.

iv. Retesting After Failure

The NPRM noted that some applicants may fail the initial aeronautical knowledge test the first time that they take it. To ensure that those applicants take the time to do additional studying and/or training (rather than simply take the test over and over again), the NPRM proposed to require that a person who fails the aeronautical knowledge test must wait 14 calendar days before retaking it. For the reasons discussed below, this rule will finalize this provision as proposed in the NPRM. 14 CFR 107.71.

One commenter suggested that an applicant who fails the knowledge test should be required to receive additional training in the area(s) of deficiency and receive an endorsement from a flight instructor in order to retake the test. The commenter rationalized that this would be consistent with current policy for pilot applicants with regards to failure and retesting, and will enhance safety by ensuring some level of oversight in the training process.

A person who fails the aeronautical knowledge test will receive a knowledge test report pointing out the areas of knowledge on which he or she did not test well. That person will then have 14 days to conduct additional study or training in those areas of knowledge prior to retaking the knowledge test. Specifying a prescriptive method of study is not necessary in this rule. Instead, the applicant will be incentivized to select the method of study that works best for him or her.

l. Transportation Security Administration Vetting and Process for Issuance

i. TSA Vetting and Temporary Remote Pilot Certificates

Prior to the issuance of a remote pilot certificate with a small UAS rating, the NPRM proposed requiring all applicants to be vetted by the Transportation Security Administration (TSA). Under the proposed rule, the FAA would transmit an airman certificate applicant's biographical information for security vetting to TSA and issue an airman certificate only after receiving a successful response from TSA. However, if TSA determines that an airman certificate applicant poses a security risk, 49 U.S.C. 46111 requires the FAA to deny the application for a certificate or amend, modify, suspend, or revoke (as appropriate) any part of an airman certificate based on TSA's security findings.

Additionally, the proposed rule would have required an applicant for a remote pilot certificate with a small UAS rating to submit the application to a Flight Standards District Office (FSDO), a designated pilot examiner (DPE), an airman certification representative (ACR) for a pilot school, a certificated flight instructor (CFI), or other persons authorized by the Administrator. The person accepting the application submission would be required to verify that the identity of the applicant matches the identity that is provided on the application.

For the reasons discussed below, this rule will, with one exception, allow an applicant who has passed the aeronautical knowledge test to submit an application for a remote pilot certificate directly to the FAA without having to travel to a Flight Standards District Office (FSDO), designated pilot examiner (DPE), airman certification representative (ACR), or certificated flight instructor (CFI). Holders of a part 61 pilot certificate who elect to take the online training course instead of the aeronautical knowledge test will, as proposed in the NPRM, be required to submit their certificate to a FSDO, DPE, ACR, or CFI in order to verify their identity. Part 61 pilot certificate holders will be issued a temporary remote pilot certificate immediately upon acceptance of their certificate application while all other applicants will be issued a temporary remote pilot certificate upon successful completion of TSA security vetting.

Many commenters, including Google, NAMIC, and Edison Electric Institute, agreed that applicants for a remote pilot certificate with a small UAS rating should be vetted by TSA as a prerequisite for obtaining a certificate. The City and County of Denver noted that a specific vetting mechanism is not detailed in the proposed regulations, and recommended that the FAA expressly require a completed Security and Threat Assessment (STA) as a prerequisite for obtaining an operating license. Virginia Commonwealth University Honors Students recommended that the vetting process include a criminal background check and that FAA decline operators who have been charged with a violent or sexual crime. The American Fuel & Petrochemical Manufacturers and the IME suggested that the FAA state explicitly in the final rule that failing the security threat assessment will disqualify an individual from obtaining an unmanned aircraft operator certificate with a small UAS rating. These and other commenters also generally noted that the FAA should ensure that there is a redress procedure for cases where an individual believes he or she improperly failed the security threat assessment. IME recommended that the certificate action processes codified in 49 U.S.C. 46111, including revocations, hearings, timely appeals and reviews, be included in the final rule.

The governing statute requires that "individuals are screened against all appropriate records in the consolidated and integrated terrorist watchlist maintained by the Federal Government before . . . being certificated by the Federal Aviation Administration." 49 U.S.C. 44903(j)(2)(D)(i). Also, if TSA determines that an applicant poses a security risk as a result of the security vetting, 49 U.S.C. 46111 requires the FAA to deny that applicant's certificate application or amend, modify, suspend, or revoke (as appropriate) any part of an airman certificate based on the TSA's security findings.

The current certificate vetting program that the TSA administers satisfies the statutory vetting requirements. The FAA collects and provides the biographic information of FAA Airmen Certificate applicants, certificate holders, and those applying for airmen certificates on the basis of a foreign license to TSA for use in the security vetting. Under this final rule, the FAA will leverage the current process for the vetting of remote pilot certificate applicants. As stated in the NPRM and in accordance with the governing statute, the FAA may issue certificates to individuals who have first successfully completed an STA conducted by the TSA. The STA that TSA conducts adheres to the statutory mandate to vet certificate applicants against the government's consolidated terrorist watchlists to determine whether they may pose a threat to national or transportation security. The FAA defers to TSA's established STA, and TSA's determination of what factors, such as items contained within an individual's criminal record, will rise to the level of disqualification for a remote pilot certificate. The authority for TSA to establish these criteria and make this determination is codified in 49 U.S.C. 44903(j)(2)(D)(i). Because section 44903 vests the pertinent authority in the TSA, the Department cannot, in this DOT rulemaking, specify what factors the TSA should consider to be disqualifying.

Additionally, TSA provides a substantial amount of due process to individuals who believe that they improperly failed an STA. Specifically, upon finding that an individual poses a security threat, the TSA issues a Determination of Security Threat to the individual. That individual may then make a written request for copies of releasable materials upon which the Determination of Security Threat was based. The TSA must respond no later than 60 days after receiving the request, and the individual may submit a written reply to the TSA's response. Upon receiving TSA's response, an individual who is a citizen of the United States is entitled to a hearing on the record in front of an administrative law judge (ALJ). That individual may then appeal the results of the hearing to the Transportation Security Oversight Board. If unsatisfied with the results of this appeal, the individual can obtain further review of the decision in Federal court.

Non-citizen U.S. nationals (which generally includes individuals born in American Samoa and Swains Island) and permanent residents may also have a hearing before the ALJ, but the ALJ's decision is reviewed by the TSA. TSA's decision on appeal is a final agency action appealable to a Federal court. A foreign national does not have the right to a hearing before an ALJ, but may seek review of the final agency decision in Federal court.

SkyView recommended that the FAA collect and verify additional information such as email address or home/cell phone numbers that could be used to contact the applicant quickly should the need arise. NBAA asserted that it had reviewed TSA's STA requirements, which the association said seem to presume that a larger organization is involved rather than an individual. The association subsequently questioned how, in cases where an operator is a single person, the FAA and TSA plan to address requirements that NBAA believes were developed for larger, more complex organizations.

In response to Skyview's comment asking the FAA to collect applicant contact information, the FAA notes that an applicant will be required to provide pertinent contact information on the application for a remote pilot certificate. Additionally, the FAA clarifies that the STAs that are currently being conducted by TSA for the FAA Airmen Certification Branch are being conducted for individuals, not organizations.

Several commenters suggested amending the TSA vetting process, creating exceptions for certain individuals, or eliminating the requirement altogether. Commenters, including Event 38 Unmanned Systems, Associated General Contractors of America, and Edison Electric Institute, expressed concern over the estimated 6-to-8-week time-frame between receipt of an application and issuance of a remote pilot certificate with small UAS rating as proposed in the NPRM. It is important to note that TSA's security vetting is complete in less than 7 days unless derogatory information related to the applicant is discovered and must be investigated to complete the STA.

Several commenters, including the Electronic Frontier Foundation, Washington Aviation Group, and Event 38 Unmanned Systems, opposed the requirement for small UAS operator applicants to undergo a TSA background check prior to receiving their operator certificate. Many of these commenters pointed out that it is highly unlikely that an individual who poses a threat to national security would seek to obtain an airman certificate and go through the TSA vetting process.

Several commenters argued that pre-screening applicants is extremely burdensome for entrepreneurs and small businesses, and creates a barrier to market entry. Some commenters argued that 49 U.S.C. 46111 does not require the FAA to wait until hearing back from TSA prior to granting the certificate, or that it does not confer the authority to pre-screen applicants for an airmen certificate. One commenter suggested that the knowledge testing centers be able to issue temporary certificates upon passing the knowledge test, which could be revoked if the TSA vetting process indicated that the individual should not be issued a remote pilot certificate.

As discussed previously, 49 U.S.C. 44903(j)(2)(D)(i) is unambiguous and states that the vetting must be completed before the FAA may issue an airman certificate. Given the relatively short time the vetting takes for the overwhelming majority of applicants, it is difficult to identify a burden that is not outweighed by the clear benefit of ensuring that certificate holders do not pose a threat to national or transportation security. Section 44903(j)(2)(D)(i) explicitly states that TSA screening of an individual must take place "before" that individual is certificated by the FAA.

In addition, 49 U.S.C. 44903(j)(2)(D) and 46111 vest the authority for vetting with TSA. Specifically, section 46111(a) states that "[t]he Administrator of Federal Aviation Administration shall issue an order amending, modifying, suspending, or revoking any part of a certificate issued under this title if the Administrator is notified by the Under Secretary for Border and Transportation Security of the Department of Homeland Security that the holder of the certificate poses, or is suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety." (Emphasis added). Thus, under § 46111, the FAA's role in the vetting process is ministerial; the FAA acts on findings that have been made by the TSA, but it is TSA that makes the actual security determinations. Because the authority for making the pertinent security determination is vested with TSA, the Department does not have jurisdiction to alter the criteria and requirements of that determination in the manner suggested by the commenters.

The FAA acknowledges, however, the commenters' concern regarding the estimated 6-to-8-week timeframe associated with processing the certificate application. In response, this rule will allow an applicant who already holds a part 61 pilot certificate to obtain a temporary remote pilot certificate immediately upon FAA receipt of his or her application. The FAA is able to issue a temporary remote pilot certificate to part 61 pilot certificate holders prior to completion of new security vetting because these individuals have already been successfully completed the TSA vetting when they obtained their part 61 pilot certificates.

The FAA will also issue a temporary electronic remote pilot certificate to all other applicants who apply through IACRA upon successful completion of TSA security vetting. The FAA anticipates that, while it may take the FAA 6 to 8 weeks to issue a permanent remote pilot certificate, a temporary remote pilot certificate can be issued in about 10 business days. The temporary remote pilot certificate will allow the certificate holder to exercise all the privileges of the certificate, thus significantly reducing the waiting period prior to being able to operate as a remote pilot in command under part 107.

Just like a temporary pilot certificate issued under part 61,[143] a temporary remote pilot certificate with a small

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[143] *See* 14 CFR 61.17.

UAS rating will be valid for 120 days after issuance. This will provide sufficient time for the FAA to complete its processing of the certificate application and issue the applicant a permanent remote pilot certificate. The temporary certificate will automatically expire once the applicant receives a permanent remote pilot certificate with a small UAS rating. The temporary certificate will also expire if the FAA discovers an issue with the certificate application and issues the applicant a notice that his or her certificate application is denied or the certificate (if one has already been issued) is revoked.

The FAA defers to TSA on whether current part 61 pilot certificate holders will have to continue to undergo the vetting process in order to receive a non-temporary remote pilot certificate with a small UAS rating. The FAA also notes that applicants who have passed STAs for other federal programs, received background checks, or hold U.S. passports will still need to satisfy TSA's STA specific to the statute that requires security vetting prior to issuance of an airmen's certificate (49 U.S.C. 44903). The FAA does not have jurisdiction to accept alternative documentation instead of a TSA security finding because, as discussed earlier, 49 U.S.C. 44903(j)(2)(D) and 46111 vest the pertinent jurisdiction in the TSA. In response to DJI, the FAA notes that a complete TSA vetting process is an integral part of the requirements of this rule because it reduces the risk of a person who poses a security threat obtaining an airman certificate under part 107.

ii. Issuance and Positive Identification

Regarding issuance and positive identification, many commenters suggested changes to the FAA's current process and responsibilities for testing, acceptance of airman applications, and issuance of airman certificates that would only apply to unmanned aircraft operator certificates with a small UAS rating. AirGon, as well as another individual commenter, generally suggested that the knowledge testing centers process the applications, verify the identity of the applicant and submit the applications to TSA.

As discussed in section III.F.2.k.iii above, knowledge testing centers will be required to positively verify the identity of the applicant prior to providing him or her with a knowledge test to ensure that someone else is not taking the test for the applicant. The NPRM proposed that an applicant who passes a knowledge test would then have to be positively identified a second time by a FSDO, DPE, ACR, or CFI. This second identification would impose a burden in the form of travel costs and service fees (charged by DPEs, ACRs, and CFIs) without benefits sufficient to justify this burden, as the applicant has already been positively identified. Accordingly, this rule will not require applicants who pass an aeronautical knowledge test to submit their application to a FSDO, DPE, ACR, or CFI. Instead these applicants may submit their paper application via mail or electronically via IACRA.

The FAA notes, however, that as discussed previously, part 61 pilot certificate holders who have completed a flight review within the previous 24 months will have the option to take an online training course instead of an aeronautical knowledge test. Because part 61 pilot certificate holders who elect to exercise this option will not be positively identified at a knowledge testing center, this rule will require them to submit their remote pilot application to a FSDO, DPE, ACR, or CFI so that the person accepting their application can positively verify the identity of the applicant and establish that the applicant has met the eligibility requirements of the remote pilot certificate with small UAS rating.

Under this approach, FSDOs, DPEs, and ACRs, who can currently accept applications for an airman certificate, will continue doing so for part 61 pilot certificate holders who take the online training course instead of a knowledge test. Additionally, as proposed in the NPRM, CFIs will also be able to accept remote pilot certificate applications because CFIs are recognized by TSA regulations as being able to verify identity.[144] The FAA notes that there is an approximate combined total of 100,000 DPEs, ACRs, and CFIs, all of whom will be able to accept an airman application and verify identity of part 61 pilot certificate holders under this rule.

ALPA questioned the use of the term "student pilot" in the TSA vetting section of the NPRM. The FAA acknowledges the terminology should have been "applicant for remote pilot certificate with small UAS rating" and will correct the terminology in the final rule accordingly.

3. Remote Pilot Certificate Denial, Revocation, Suspension, Amendment, and Surrender

As proposed in the NPRM, this rule will allow the FAA to deny, suspend, or revoke a certificate for reasons including drug or alcohol offenses and refusal to submit to an alcohol test or furnish the results.[145] Additionally, as discussed in the Remote Pilot Certificate Issuance and Eligibility section of this preamble, this rule will allow the FAA to deny, suspend, or revoke a certificate if TSA makes a finding that the applicant or certificate holder poses a security risk. This rule will also require certificate holders to notify the FAA of any change in name or address. Finally, certificate holders will be able to voluntarily surrender their certificates.

a. Drugs and Alcohol Violations

The FAA adopts the provisions related to drug and alcohol violations as proposed in the NPRM. Accordingly, under § 107.57(a), the FAA may deny a remote pilot certificate application or take other certificate action for violations of Federal or State drug laws. Certificates could also be denied, suspended, or revoked under § 107.57(b) for committing an act prohibited by § 91.17 or § 91.19, as discussed in section III.I of this preamble.

One commenter stated that any remote pilot should lose his or her privileges under part 107 if found to be operating while in a condition that does not permit safe operation of the small UAS. Another commenter suggested that remote pilot certificates should be denied, suspended or revoked for committing an act prohibited by 14 CFR 91.17 or § 91.19.

The FAA agrees. Under this rule, if a person violates § 91.17 or § 91.19, the FAA can take enforcement action, which may result in the imposition of civil penalties or suspension or revocation of that person's airman certificate. Section 107.59 of this rule specifies that certificate action could be taken for: (1) failure to submit to a blood alcohol test or to release test results to the FAA as required by § 91.17; or (2) carriage of illegal drugs in violation of § 91.19.

b. Change of Name

Section 107.77(a) will allow a person holding a remote pilot certificate with a small UAS rating to change the name on the certificate by submitting a name-change application to the FAA accompanied by the applicant's: (1) Remote pilot certificate; and (2) copy of the marriage license, court order, or other document verifying the name change. After reviewing these documents, the FAA will return them to the applicant. These procedures mirror the regulations governing pilot certificates currently issued under part 61. The FAA did not receive any adverse comments on these provisions when they were proposed in the NPRM.

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[144] *See* 49 CFR 1552.3(h)(1).

[145] These requirements are similar to the ones imposed on part 61 pilot certificates by §§ 61.15(a) and 61.16.

c. Change of Address

This rule will extend the existing change-of-mailing-address requirement of part 61 to holders of a remote pilot certificate with a small UAS rating. Specifically § 107.77(c) will require a certificate holder who has made a change in permanent mailing address to notify the FAA within 30 days of making the address change. Failure to do so will prohibit the certificate holder from exercising the privileges of the airman certificate until he or she has notified the FAA of the changed address. This regulatory provision will help ensure that the FAA is able to contact airman certificate holders. The FAA did not receive any adverse comments on this provision when it was proposed in the NPRM.

d. Voluntary Surrender of Certificate

Section 107.79 will allow the holder of a remote pilot certificate with a small UAS rating to voluntarily surrender it to the FAA for cancellation. However, the FAA emphasizes that cancelling the certificate pursuant to § 107.79 will mean that the certificate no longer exists, and the individual who surrendered the certificate will need to again go through the entire certification process if he or she subsequently changes his or her mind. For individuals who are not part 61 pilot certificate holders, this includes passing the initial aeronautical knowledge test. Accordingly, § 107.79(b) will require the individual surrendering the certificate to include the following signed statement (or an equivalent) in his or her cancellation request:

> I voluntarily surrender my remote pilot certificate with a small UAS rating for cancellation. This request is made for my own reasons with full knowledge that my certificate will not be reissued to me unless I again complete the requirements specified in § 107.61 and § 107.63.

The FAA did not receive any adverse comments on this provision when it was proposed in the NPRM.

e. Additional Comments on Remote Pilot Certificate

Several commenters, including National Business Aviation Association, the State of Nevada, and Southern Company, agreed that unmanned aircraft operator certificates with a small UAS rating should not expire. On the other hand, two commenters suggested that the certificate should expire every 2 years, and that the FAA should require passing the recurrent knowledge test for renewal. The American Insurance Association said that employees of insurance companies who operate micro UAS should only have to be certificated once and there should be no annual two year renewal unless the insurance company elects to replace its selected micro UAS.

NetMoby commented that an unmanned aircraft operator certificate with a small UAS rating should be automatically revoked if the remote pilot fails a recurrent aeronautical knowledge test. Other commenters suggested that there should be a process for the FAA to revoke an unmanned aircraft operator certificate with a small UAS rating if the operator operates a UAS in an unsafe manner. NetMoby also suggested that a remote pilot who violates the prohibition regarding UAS operation in certain airspace should have their unmanned aircraft operator certificate with a small UAS rating revoked for life.

As with other pilot certificates issued by the FAA, a remote pilot certificate with a small UAS rating will never expire. However, under the provisions of this rule, after a person receives a remote pilot certificate with a small UAS rating, that person will have to demonstrate that they have retained the required aeronautical knowledge in order to retain the privileges to operate a small unmanned aircraft. As discussed in section III.F.2.g of this preamble, a remote pilot who does not hold a part 61 pilot certificate will have to pass a recurrent aeronautical knowledge test given by an FAA knowledge testing center every 24 calendar months after the issuance of a new remote pilot certificate with a small UAS rating to continue to exercise the privileges of that certificate in the NAS. A remote pilot who holds a part 61 pilot certificate will have to either maintain a current flight review and complete an online recurrent training course every 24 calendar months, or pass a recurrent aeronautical knowledge test as described above. This will ensure that a remote pilot continues to retain the knowledge necessary to safely operate a small unmanned aircraft.

The FAA disagrees with comments suggesting automatic revocation of the certificate if a remote pilot fails a recurrent aeronautical knowledge test. Revoking the airman certificate would impose the cost of having to eventually reissue the certificate on FAA and TSA without a corresponding safety benefit. A certificate holder unable to show that he or she has passed either the initial or recurrent knowledge test within the preceding two-year period, or has maintained a current flight review and completed the online training course within the preceding two-year period, will be unable to exercise the privileges of his or her certificate until he or she meets the applicable currency requirements.

In response to comments asking the FAA to establish penalties for certain regulatory violations, the FAA clarifies that there already exists a process for addressing regulatory violations, which can be found in 14 CFR part 13. Part 13 specifies the penalties that the FAA may impose in response to a regulatory violation, and, in appropriate circumstances, those penalties may include the revocation of an individual's airman certificate.[146] The FAA has also issued guidance on potential sanctions that may be imposed for specific regulatory violations. This guidance can be found in Chapter 7 and Appendix B of FAA Order 2150.3B.

G. Registration and Marking

The NPRM proposed applying to small UAS the then-existing registration requirements that applied to all aircraft. The NPRM also proposed requiring that all small UAS have their registration and nationality marks displayed in accordance with Subpart C of part 45.

Approximately 125 commenters provided input on the proposed registration requirement or the associated process, with most commenters stating that it was a reasonable or necessary requirement. Of the roughly 110 commenters that addressed the proposed marking requirements, most supported requiring identification markings on small UAS.

On December 16, 2015, subsequent to the issuance of the NPRM for this rule, the FAA published the *Registration and Marking Requirements for Small Unmanned Aircraft* interim final rule (Registration Rule).[147] In the Registration Rule, the FAA considered and addressed the comments it received in response to the registration and marking proposals in the NPRM for this rule. As a result, the Registration Rule provided a streamlined and simple web-based aircraft registration process for the registration of small unmanned aircraft, as well as a simpler method for marking small unmanned aircraft. The Registration Rule invited further comment on its contents and the FAA will consider any significant issues that are raised by the commenters.

Because the registration and marking components that were originally part of the NPRM for this rule are now being addressed in a different rulemaking (the Registration Rule), these components are no longer a part of this rule. Thus, instead of imposing any new registration or marking requirements, this rule will simply require that any person operating a civil small UAS for purposes of flight comply with the existing requirements of § 91.203(a)(2). Section 91.203(a)(2) requires a person operating a civil small unmanned aircraft to have an effective U.S. registration certificate that is readily available to the owner or operator, as applicable.[148]

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[146] *See* 14 CFR part 13, subpart C.

[147] *Registration and Marking Requirements for Small Unmanned Aircraft*, 80 FR 78594 (Dec. 16, 2015).

H. Fraud and False Statements

Currently, the U.S. criminal code prohibits fraud and falsification in matters within the jurisdiction of the executive branch.[149] The FAA too may impose civil sanctions in instances of fraud and falsification in matters within its jurisdiction.[150]

The NPRM proposed to prohibit a person from making a fraudulent or intentionally false record or report that is required for compliance with the provisions of part 107. The NPRM also proposed to prohibit a person from making any reproduction or alteration, for a fraudulent purpose, of any certificate, rating, authorization, record, or report that is made pursuant to part 107. Finally, the NPRM proposed to specify that the commission of a fraudulent or intentionally false act in violation of § 107.5(a) could result in the denial, suspension, or revocation of a certificate or waiver issued by the FAA pursuant to this proposed rule. For the reasons discussed below, this rule will finalize these provisions as proposed with some minor revisions for clarification purposes.

Three organizations and one individual commented on the proposal to prohibit fraud and false statements, and all of those commenters generally supported the proposal. For example, the Small UAV Coalition stated that they support the FAA's proposal to prohibit intentionally false or fraudulent documents used to show compliance with part 107, and added that such false or fraudulent records or reports warrant enforcement action. One individual supported "heavy fines or jail" for those providing false information.

Two commenters, the University of North Dakota's John D. Odegard School of Aerospace Sciences and the Institute of Makers of Explosives, requested clarification as to the penalties that could be imposed for violating the prohibition on fraud and false statements. The University of North Dakota's John D. Odegard School of Aerospace Sciences asked whether FAA Order 2150.3B would be applicable in its existing form to operations under part 107 and if so, whether the sanctions guideline ranges described in that publication are appropriate for violations of part 107.

Subpart C of 14 CFR part 13 specifies the penalties that the FAA may impose in response to a regulatory violation. To provide further clarity, the FAA has amended § 107.5 with a list of potential sanctions that could be imposed in response to a violation of § 107.5. Those sanctions may, among other things, include a civil penalty or certificate action. The FAA has also issued generally applicable guidance on sanctions that may be imposed for regulatory violations, which can be found in FAA Order 2150.3B. The FAA is currently considering whether Order 2150.3B addresses UAS-specific considerations that may arise in enforcement actions under part 107, and the agency may revise this order, as appropriate, to reflect this consideration.

I. Oversight

This section discusses two aspects of FAA oversight of part 107 small UAS operations. First, this section discusses inspection, testing, and demonstration of compliance requirements applicable to a part 107 operation. Second, this section discusses the accident-reporting requirements that part 107 will impose on the remote pilot in command.

1. Inspection, Testing, and Demonstration of Compliance

The FAA's oversight statutes, codified at 49 U.S.C. 44709 and 46104, provide the FAA with broad investigatory and inspection authority for matters within the FAA's jurisdiction. Under section 46104, the FAA may subpoena witnesses and records, administer oaths, examine witnesses, and receive evidence at a place in the United States that the FAA designates. Under section 44709, the FAA may "reinspect at any time a civil aircraft, aircraft engine, propeller, appliance, design organization, production certificate holder, air navigation facility, or agency, or reexamine an airman holding a certificate issued [by the FAA]."

The NPRM proposed to codify the FAA's oversight authority in proposed § 107.7. First, § 107.7 would require the airman, visual observer, or owner of a small UAS to, upon FAA request, allow the FAA to make any test or inspection of the small unmanned aircraft system, the airman, and, if applicable, the visual observer to determine compliance with the provisions of proposed part 107. Second, § 107.7 would require an airman or owner of a small UAS to, upon FAA request, make available to the FAA any document, record, or report required to be kept by the applicable FAA regulations. For the reasons discussed below, this rule will finalize these provisions as proposed.[151]

The Department of Defense Policy Board on Federal Aviation suggested that § 107.7(a) be reworded to limit its applicability to "civil operators," not operators in general. The commenter asserted that this change would preserve public operators' statutory authorities.

As discussed in section III.C.3 of this preamble, the applicability of part 107 is limited to civil aircraft. Thus, part 107 will not apply to public aircraft operations. Because public aircraft operations will not be subject to § 107.7 (or any other provision of part 107) there is no need to amend the regulatory text of § 107.7 with regard to civil aircraft.

The Kansas State University UAS Program asked the FAA to clarify, with respect to § 107.7(b), what types of tests or inspections could be performed on the remote pilot or visual observer. Specifically, the commenter suggested that the FAA define whether such persons could be subjected to blood alcohol tests, drug tests, or knowledge tests. They also recommend that the section be reworded to reference § 91.17(c).

Section 107.7(b) codifies the FAA's authority under 49 U.S.C. 44709 and 46104, which allow the FAA to inspect and investigate the remote pilot. This may involve a review, reinspection, or requalification of the remote pilot. With regard to requalification, 49 U.S.C. 44709 and § 107.7(b) allow the FAA to reexamine a remote pilot if the FAA has sufficient reason to believe that the remote pilot may not be qualified to exercise the privileges of his or her certificate. Additional guidance concerning the reexamination process can be found in FAA Order 8900.1, ch. 7, sec. 1.

Pertaining to the visual observer, as an active participant in small UAS operations, this person may be questioned with regard to his or her involvement in the operation. For example, if an FAA inspector has reason to believe that a visual observer was not provided with the preflight information required by § 107.49, the inspector may ask the visual observer questions to ascertain what happened. Because the visual observer is not an airman, the visual observer will not be subject to reexamination.

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[148] *Id.* at 78623.

[149] 18 U.S.C. 1001.

[150] The FAA has exercised this power in 14 CFR 61.59, 67.403, 121.9, and 139.115, which currently impose civil prohibitions on fraud and false statements made in matters within the FAA's jurisdiction.

[151] The original provisions in the NPRM referred to "operator." However, due to the change in crewmember titles (discussed in section III.E.1 of this preamble), the term "operator" has been replaced by the remote pilot in command.

With regard to § 91.17(c), the FAA notes that, as discussed in section III.E.7.b of this preamble, § 107.27 will, among other things, require the remote pilot in command, the visual observer, and the person manipulating the flight controls of a small UAS to comply with § 91.17. This includes compliance with the alcohol-testing requirements of § 91.17(c).

The City and County of Denver, Colorado suggested that airports be given the same rights as those granted to the FAA under § 107.7(b). The commenter argued that airport operators have a duty to protect airport property, and that that duty can be fulfilled only when the airport operator has the opportunity to determine the nature and airworthiness of a small UAS.

AUVSI suggested that the FAA allow designated representatives pursuant to 14 CFR part 183 to act on behalf of the Administrator in order to determine compliance with the new regulatory standards. The commenter asserted that the FAA will not have the necessary manpower or financial resources required to allow the UAS industry and its technology to continue to evolve at its own pace. An individual commenter suggested that the FAA delegate compliance and enforcement authority to law enforcement officers and NTSB representatives.

The FAA's statute does not authorize the agency to delegate its formal enforcement functions. Because it lacks the pertinent statutory authority, the FAA cannot delegate its enforcement functions in the manner suggested by the commenters. The FAA notes, however, that even though it cannot delegate its formal enforcement functions, it has worked closely with outside stakeholders to incorporate their assistance in its oversight processes. For example, the FAA has recently issued guidance to State and local law enforcement agencies to support the partnership between the FAA and these agencies in addressing unauthorized UAS activities.[152] The FAA anticipates continuing its existing partnerships to help detect and address unauthorized UAS activities, and the agency will consider other stakeholders' requests to be part of the process of ensuring the safe and lawful use of small UAS.

One individual suggested that a remote pilot in command must enable and make available to the FAA any flight log recording if the aircraft and/or control station is capable of creating such a recording. In response, the FAA notes that this rule does not require that a small UAS operation have the capability to create a flight log recording. However, if a small UAS does create such a recording, § 107.7(b) will allow the FAA to inspect the small UAS (including the recording made by the small UAS) to determine compliance with the provisions of part 107.

One individual suggested that the wording of § 107.7(b) be modified to permit the FAA to conduct only "non-destructive testing" in the event of a reported violation of one or more provisions of part 107. The commenter asserts that, as written, § 107.7(b) would permit the FAA to "destructively test" every small UAS "on whim."

The FAA declines this suggestion because there could be circumstances where destructive testing of a small UAS may be necessary to determine compliance with part 107. The FAA emphasizes, however, that this type of decision would not be made lightly and would not be part of a typical FAA inspection. For example, the FAA's guidance to FAA inspectors about how to conduct a typical ramp inspection specifically focuses on non-destructive methods that the inspector can use to determine whether an aircraft is in compliance with FAA regulations.[153] The FAA anticipates that, just as with manned aircraft, destructive testing of a small UAS will, if ever conducted, occur highly infrequently.

One individual recommended that § 107.7 be modified to require a remote pilot to make a photo ID available to the FAA on demand. The FAA did not propose this requirement in the NPRM, and as such, it is beyond the scope of this rule.

2. Accident Reporting

To ensure proper oversight of small UAS operations, the NPRM proposed to require a small UAS operator to report to the FAA any small UAS operation that results in: (1) Any injury to a person; or (2) damage to property other than the small unmanned aircraft. The report would have to be made to the FAA within 10 days of the operation that resulted in injury or damage to property. After receiving this report, the FAA may conduct further investigation to determine whether any FAA regulations were violated.

The NPRM invited comments as to whether this type of accident reporting should be required. The NPRM also invited comments as to whether small UAS accidents that result in minimal amounts of property damage should be exempted from the reporting requirement, and, if so, what threshold of property damage should trigger the accident reporting requirement. For the reasons discussed below, this rule will require accident reporting of accidents that result in at least: (1) Serious injury to any person or any loss of consciousness; or (2) damage to any property, other than the small unmanned aircraft, unless the cost of repair (including materials and labor) or fair market value in the event of total loss does not exceed $500.

Most of the commenters who addressed this issue generally supported an accident reporting requirement. However, the commenters questioned whether the proposed requirement to report any injury or property damage is too broad because it does not consider the severity of the injury or property damage. To correct what they also saw as an overly broad accident reporting requirement, most of the commenters recommended the proposed requirement be amended to stipulate that reporting is required only for operations that cause injury or property damage above certain thresholds.

A number of commenters recommended general thresholds for reportable injuries and property damage. For example, the Drone User Group Network said an operation should be reportable if it involves "significant" injury or property damage. The University of North Dakota's John D. Odegard School of Aerospace Sciences said an operation should be reportable if it involves "serious" injury or "substantial" property damage; such a requirement, the commenter pointed out, is in line with the NTSB definition of "occurrence" and the FAA definition of "accident." AIA suggested a reporting requirement for operations causing "serious bodily harm (those requiring hospitalization, for instance)" or "substantial" property damage. AUVSI, University of North Carolina System, and Prioria said operations resulting in minor injuries or minimal damage to property should not be required to be reported in the same manner as more serious injuries or substantial damage to property. UPS said an operation should be reportable if it causes an injury that requires medical attention or property damage that exceeds a threshold amount "sufficient to exclude insignificant incidents." An individual commenter recommended a reporting requirement for operations that result in injury or property damage "which is over the upper monetary limit of the small claims court jurisdiction."

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[152] A copy of the guidance document can be found at: *https://www.faa.gov/uas/regulations_policies/media/FAA_UAS-PO_LEA_Guidance.pdf.*

[153] *See* FAA Order 8900.1, ch. 1, sec. 4, par. 6–100(G)–(I).

Several commenters recommended more specific thresholds for reportable injuries and property damage. These commenters generally recommended a requirement that the injury caused by the operation be one that necessitates some sort of medical attention and that the property damage caused by the operation exceed some minimum monetary threshold, ranging from $100 to $25,000. For example, commenters recommended some of the following specific thresholds be added to the proposed accident reporting requirement:

- Modovolate Aviation and Aviation Management said an operation should be reportable if it causes injury requiring "hospitalization or other treatment by a provider of medical care," or "professional medical assistance," respectively, or property damage of $1,000.
- NBAA said an operation should be reportable if a person has to seek medical treatment as a result of the operation or if property damage exceeds $1,000 or if a police report is filed.
- NAMIC said an operation should be reportable if it causes injury "requiring professional medical treatment" or property damage greater than $2,000.
- The Travelers Companies said an operation should be reportable if it causes "'serious' injuries caused by impact of the UAS" or property damage of over $5,000.
- Clean Gulf Associations said an operation should be reportable if it causes injury "which requires professional medical treatment beyond first aid or death to any person" or property damage greater than $10,000.
- Jam Aviation said an operation should be reportable if it causes injury "that requires emergency medical attention" or property damage that exceeds $25,000 or fair market value in the event of total loss, whichever is less.
- Skycatch, Clayco, AECOM, and DPR Construction said an operation should be reportable if it causes injury "requiring assistance of trained medical personnel" or property damage in excess of $20,000.

The California Department of Transportation, Virginia Commonwealth University Honors Students, Southern Company, and a few individual commenters suggested that the accident reporting requirement in this rule should be modeled after the accident reporting requirement for manned aircraft, which, among other things, requires an operator to notify NTSB of an accident resulting in death or "serious injury" (see 49 CFR 830.2) or of damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less. (See 49 CFR 830.5(a)(6)).

The Kansas State University UAS Program and Cherokee Nation Technologies said the FAA should follow the NTSB reporting requirement for property damage, but made no comment regarding the injury component of the proposed accident reporting requirement. NTSB also pointed to the manned-aircraft reporting requirement for property damage and suggested the FAA take this, and other criteria included in 49 CFR part 830, into account. An individual commenter pointed out that the NTSB has specific reporting requirements for UAS, and said the FAA's proposed accident reporting requirement should therefore be amended to begin with the phrase: "In addition to UAS accident/incident reporting requirement of the National Transportation Safety Board. . . ."

Several other commenters also only addressed the property damage component of the accident reporting requirement. An individual commenter said no accident need be reported where the property damage is considered inconsequential by the owner of the property. SkySpecs recommended a reporting requirement for property damage above $100, or if an insurance report is filed. The Center of Innovation-Aerospace, Georgia Department of Economic Development recommended a $500 threshold, which it said is a common deductible amount for property and automobile insurance. The Oklahoma Governor's Unmanned Aerial Systems Council (which explicitly supported the proposed requirement to report all accidents resulting in any injury) expressed concern that a threshold lower than $1,000 would result in unnecessary and burdensome reporting of information and data that would not be beneficial to the FAA, the public, or the industry in general. The American Insurance Association recommended a $5,000 threshold for property damage. The Small UAV Coalition (who also supported the proposed requirement to report accidents causing any injury) said accidents resulting in property damage should only be reportable if the damage caused is to the property of someone not involved in the operation. The commenter did not propose a minimum monetary threshold for this property damage to be reportable.

DJI, which opposed applying the NTSB accident reporting criteria to small UAS, suggested that the FAA look to how other Federal agencies, such as the National Highway Traffic Safety Administration, categorize injury by level of severity. Airport Council International-North America and Clean Gulf Associations said the injury component of the proposed accident reporting requirement should be expanded to include a requirement to report all accidents resulting in death.

Two commenters specifically addressed operations in an industrial setting that may result in injury or property damage. The American Chemistry Council said there should be no reporting requirement for operations in an industrial setting that cause workplace injuries that are covered by OSHA reporting requirements or cause less than $25,000 in damage to private property that is owned and operated by the facility owner. Associated General Contractors of America also encouraged the FAA to exclude any operations resulting in "OSHA-recordable" injuries. The commenter further recommended the FAA exclude operations resulting in "de minimis" property damage from the reporting requirement.

The FAA agrees with commenters who suggested that injuries and property damage falling below certain thresholds should not be reportable. Requiring remote pilots in command to report minimal injuries (such as a minor bruise from the unmanned aircraft) or minimal property damage (such as chipping a fleck of paint off an object) would impose a significant burden on the remote pilots. This burden would not correspond to a safety/oversight benefit because an operation resulting in minimal injury or minimal property damage may not correspond with a higher likelihood of a regulatory violation.

In determining the threshold at which to set injury reporting, the FAA agrees with commenters who suggested that the threshold should generally be set at serious injury. A serious injury is an injury that qualifies as Level 3 or higher on the Abbreviated Injury Scale (AIS) of the Association for the Advancement of Automotive Medicine. The AIS is an anatomical scoring system that provides a means of ranking the severity of an injury and is widely used by emergency medical personnel. Within the AIS system, injuries are ranked on a scale of 1 to 6, with Level 1 being a minor injury, Level 2 moderate, Level 3 serious, Level 4 severe, Level 5 critical, and Level 6 a non-survivable injury. An AIS Level 3 injury is one that is reversible but usually involves overnight hospitalization.

AIS SEVERITY LEVELS

AIS Level	Severity	Type of injury
1	Minor	Superficial.
2	Moderate ..	Reversible injury; medical attention required.
3	Serious	Reversible injury; hospitalization required.
4	Severe	Life threatening; not fully recoverable without medical care.
5	Critical	Non-reversible injury; unrecoverable even with medical care.
6	Virtually Un-Survivable.	Fatal.

The FAA currently uses serious injury (AIS Level 3) as an injury threshold in other FAA regulations.[154] DOT and FAA guidance also express a preference for AIS methodology in classifying injuries for the purpose of evaluating the costs and benefits of FAA regulations.[155] Additionally, the U.S. National Highway Traffic Safety Administration (NHTSA) uses AIS level 3 injuries as the metric evaluating the effectiveness of occupant safety measures for automobiles [156] and for estimating the costs associated with automobile accidents.[157] The FAA has significant operational experience administering the serious-injury threshold and because the AIS Level 3 standard is widely used and understood, it is the appropriate injury threshold to use in this rule.

In addition to serious injuries, this rule will also require accident reporting for accidents that result in any loss of consciousness because a brief loss of consciousness may not rise to the level of a serious injury. However, the confined-area-of-operation regulations discussed in section III.E.3 of this preamble, such as the general prohibition on flight over people, are designed with the express purpose of preventing accidents in which a small unmanned aircraft hits a person on the head and causes them to lose consciousness or worse. Thus, if there is a loss of consciousness resulting from a small UAS operation, there may be a higher probability of a regulatory violation.

With regard to the threshold for reporting property damage, the FAA agrees with the Center of Innovation-Aerospace, Georgia Department of Economic Development, which suggested a property damage threshold of $500. Property damage below $500 is minimal and may even be part of the remote pilot in command's mitigations to ensure the safety of the operation. For example, a remote pilot in command may mitigate risk of loss of positive control by positioning the small UAS operation such that the small unmanned aircraft will hit uninhabited property in the event of a loss of positive control. However, property damage above $500 is not minimal, and as such, this rule will require reporting of a small UAS accident resulting in property damage exceeding $500.

In calculating the property damage, the FAA notes that sometimes, it may be significantly more cost-effective simply to replace a damaged piece of property rather than repair it. As such, for purposes of the accident-reporting requirement of part 107, property damage will be calculated by the lesser of the repair price or fair market value of the damaged property. For example, assume a small UAS accident that damages a piece of property whose fair market value is $200. Assume also that it would cost $600 to repair the damage caused by the small UAS accident. In this scenario, the remote pilot in command would not be required to report the accident because the fair market value would be lower than the repair cost, and the fair market value would be below $500. The outcome would be the same if the values in the scenario are reversed (repair cost of $200 and fair market value of $600) because the lower value (repair cost) would be below $500.

Transport Canada questioned whether small UAS operators would be permitted to continue operating their UAS after experiencing an accident/incident, or whether they would be expected to cease operations until the accident has been reported and the causal factors addressed. In response, the FAA notes that a remote pilot would need to cease operations only if the FAA revokes or suspends the remote pilot certificate or the unmanned aircraft, as a result of the accident, is no longer in a condition for safe operation in accordance with part 107.

A few commenters recommended changes to the 10-day deadline for reporting operations that result in injury or property damage. The American Insurance Association said the reporting deadline should be changed to 10 business days. The Kansas State University UAS Program recommended a 3-day reporting deadline. The Professional Helicopter Pilots Association and Virginia Department of Aviation recommended a 48-hour reporting deadline, while an individual commenter suggested a 24-hour deadline. The Oregon Department of Aviation also recommended the FAA shorten the proposed 10-day reporting deadline, but did not suggest an alternative deadline. DroneView Technologies suggested a 3-hour reporting deadline.

An accident triggering the reporting requirement of § 107.9 may involve extensive injuries or property damage. The remote pilot in command's first priority should be responding to the accident by, among other things, ensuring that any injured people receive prompt medical attention. Having to immediately draft an accident report for the FAA may interfere with that priority, and as such, the FAA declines to make the reporting deadline shorter than the 10 calendar days proposed in the NPRM. The FAA also declines to extend the reporting deadline beyond 10 calendar days because 10 days should provide a sufficient amount of time to respond to the accident and draft an accident report for the FAA.

Several other commenters, including NBAA, and NAMIC, recommended that the FAA create an online reporting system. NBAA also recommended the FAA work with NASA to determine what modifications if any would be required to the Aviation Safety Reporting System (ASRS) to accommodate small UAS reports. An individual commenter similarly recommended the ASRS be expanded to allow small UAS operators to make reports of unsafe actions on the part of manned aircraft or other small UAS operators. That commenter also suggested the FAA consider creating an online reporting mechanism for operators to voluntarily provide operational data without fear of enforcement actions being taken against them. GAMA requested that the FAA review the agency's Near-Midair Collision System (NMACS) incident reporting system to ensure that the existing business rules for reporting NMACs appropriately consider UAS. Texas A & M University-Corpus Christi/ LSUASC suggested the COA online portal be used for accident reporting. Virginia Commonwealth University Honors Students also stated that reporting of incident data to the U.S. Department of Interior's SAFECOM system should continue as well.

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[154] *See Licensing and Safety Requirements for Launch, Supplemental Notice of Proposed Rulemaking,* 67 FR 49456, 49465, July 30, 2002.

[155] *See Economic Values for FAA Investment and Regulatory Decisions,* sec. 2, available at: *https://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/media/econ-value-section-2-tx-values.pdf. See also DOT Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Aviation Analyses,* available at *https://www.transportation.gov/sites/dot.dev/files/docs/VSL%20Guidance.doc.*

[156] Office of Regulatory Analysis and Evaluation, National Center For Statistics And Analysis, *FMVSS No. 214 Amending Side Impact Dynamic Test Adding Oblique Pole Test,* (Aug. 2007).

[157] Blincoe, L. et al, *The Economic Impact of Motor Vehicle Crashes,* DOT HS 809 446 (May 2000).

This rule will allow an accident report to be submitted to the FAA electronically. The part 107 advisory circular provides guidance about how to electronically submit an accident report.

Several commenters recommended that certain incidents other than operations resulting in injury or property damage should also be reportable. The State of Nevada, the Nevada Institute for Autonomous Systems, and the Nevada FAA-designated UAS Test Site, commenting jointly, said the accident reporting requirement should be expanded to include a requirement to report any "lost platform" incident. ALPA, AIA, AUVSI, and University of North Carolina System also said the proposed rule should include a reporting requirement for "lost link" or "fly away" incidents. ALPA asserted that such a reporting requirement will allow the FAA to develop hard data on the reliability of these systems and therefore more accurately evaluate risk.

Modovolate said operations that involve complete loss of control or failure of automated safety systems such as airspace exclusion or return to home should also be reportable. An individual commenter said reports should be filed for operations where there is: Failure of the control device, failure of the flight control system, flyaway (lateral or vertical), loss of control as a result of either electrical failure or radio interference, or a close encounter with a manned aircraft where the manned aircraft was observed to make "an abrupt avoidance maneuver." Airport Council International-North America similarly recommended the accident reporting requirement be expanded to include an operation where an operator was required to take evasive action to avoid manned aircraft, especially in cases where such actions took place within 5 miles of airports. The Professional Helicopter Pilots Association recommended a reporting requirement for all accidents involving other aircraft during flight (whether manned or unmanned), as well as all accidents resulting in substantial damage to the operator's UAS.

CAPA noted that the proposal does not address reporting "HATR or other incidents that do not rise to the level or property damage or injury." The commenter recommended these incidents be reported and tracked "to ensure this policy is effective and continues to provide safe operating procedures for small UAS operations as they interface with commercial and civil aviation traffic." ALPA suggested there would be a potential safety benefit to establishing a process for small UAS owners to report malfunctions, identified defects, and other in-service problems. ALPA noted that this operational data could be used in subsequent risk evaluation.

The purpose of the accident-reporting requirement in this rule is to allow the FAA to more effectively allocate its oversight resources by focusing on potential regulatory violations that resulted in accidents. The FAA declines to mandate reporting of other events, such as the ones suggested by the commenters, because they do not rise to the level of a significant accident. The FAA notes, however, that a regulatory violation can occur without resulting in a serious accident and any regulatory violation may be subject to enforcement action.

The FAA also notes that the Aviation Safety Reporting System (ASRS) is available for voluntary reporting of any aviation safety incident or situation in which aviation safety may have been compromised. The FAA offers ASRS reporters guarantees and incentives to encourage reporting by holding ASRS reports in strict confidence and not using ASRS information against reporters in enforcement actions. Further, the FAA agrees that data collection is a valuable tool for determining a baseline for performance, reliability, and risk assessment. The FAA plans to develop a tool where remote pilots of small UAS can voluntarily share data which may not meet the threshold for accident reporting. This would provide a means for evaluation of operational integrity for small UAS.

NOAA supported the proposed accident reporting requirement, but said it should be expanded to include a requirement to report an operation that results in injury to protected wildlife. NOAA asserted that because many wildlife are also federally regulated, managed, and/or protected species, it is critical that the FAA require reporting of injury to these species, so other Federal agencies and interested parties can assess potential hazards caused by small UAS.

The FAA currently provides a way for all aircraft operators in the NAS to voluntarily report wildlife strikes. Small UAS remote pilots who encounter a wildlife strike may also submit a report. Further, remote pilots may be obligated to report death or injury to wildlife under Federal, State, or local law.

A few commenters opposed the imposition of an accident reporting requirement. Trimble argued that the damage a small UAS can cause is "sufficiently small" that operators should not have an obligation to report an accident to the FAA or NTSB. Instead, the commenter said, if an operator is unable to land a small UAS safely and an incident occurs, the operator should only be required to notify local law enforcement. An individual commenter who opposed a reporting requirement recommended "developing law enforcement relationships to facilitate investigations, insurance claims, etc."

The FAA disagrees with commenters who suggested that no data should be reported to the FAA. As discussed earlier, the FAA plans to use data collected from these reports to more effectively allocate its oversight resources. In response to the argument that accidents caused by small UAS are small, the FAA notes that reporting for accidents resulting in minor injuries or property damage below $500 will not be required.

The FAA has long-established relationships with law enforcement and values the assistance that law enforcement provides during accident/ incident investigations. However, as discussed earlier, the FAA cannot delegate its formal enforcement authority to other entities such as local law enforcement personnel.

J. Statutory Findings

In order to determine whether certain UAS may operate safely in the NAS pursuant to section 333 of Public Law 112–95, the Secretary must find that the operation of the UAS will not: (1) Create a hazard to users of the NAS or the public; or (2) pose a threat to national security.[158] The Secretary must also determine whether small UAS operations subject to this proposed rule pose a safety risk sufficient to require airworthiness certification.[159]

1. Hazard to Users of the NAS or the Public

Pursuant to section 333 of Public Law 112–95, the Secretary proposed to find that small UAS operations subject to part 107 would not create a hazard to users of the NAS or the public. The Secretary proposed this finding after concluding that the two primary safety concerns associated with small UAS operations—the ability to "see and avoid" other aircraft with no pilot on board and the operator losing positive control of the small unmanned aircraft—would be mitigated by the other provisions of the proposed rule. The NPRM invited comments on the proposed finding that small UAS operations subject to the proposed rule would not create a hazard to users of the NAS or the public.

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[158] Sec. 333(b)(1).

[159] Sec. 333(b)(2).

NRECA and NBAA supported the proposed finding, without further comment. NetMoby and Planehook, on the other hand, disagreed with the proposed finding. NetMoby argued that "[s]imply because the UAS is smaller than a manned aircraft does not necessarily mean that it does not pose a risk to the NAS or the public." Planehook argued that while operations conducted by "properly trained and conscientious operators" may not create a hazard to users of the NAS or the public, an operator may operate his or her small UAS in such a way that the operation does pose a hazard.

One commenter disagreed with the FAA's analysis of public risk, and therefore with the proposed finding that small UAS operations subject to the proposed rule would not create a hazard to users of the NAS or the public.

The FAA acknowledges NetMoby and Planehook's comments that even a small aircraft or a small UAS operated in a careless or reckless manner can cause a hazard to the NAS and the public. However the Secretary's finding is based on small UAS operations subject to the mitigations of part 107. Any operations conducted in a careless or reckless manner would be in violation of part 107. Additionally, although a smaller aircraft may pose a reduced hazard as compared to larger manned aircraft, the Secretary's finding is not based on the size of the aircraft alone. Rather, the combination of mitigations provided by part 107, including requiring operations to be conducted within visual line of sight; limiting maximum gross weight of the small unmanned aircraft to be below 55 pounds; limiting the operating altitude to below 400 feet AGL; requiring remote pilots to be certificated; defining area of operation; and prohibiting operations over any person not directly participating in the operation, support the Secretary's finding that this rule will not create a hazard to users of the NAS or the public.

In response to the individual commenter who disagreed with the Department's analysis of public risk, the agency notes that its hazard determination is based on the mitigations required by part 107, rather than the public risk as determined by calculating the probability of a small UAS harming an individual. Because small UAS come in many different shapes and sizes, and with varied capabilities, the FAA determined what hazards all small unmanned aircraft pose to the NAS and the public, and then put mitigations into part 107 to reduce those hazards. Based on these mitigations, the Secretary finds that operations subject to and compliant with part 107 pose no hazard to the public and the NAS.

2. National Security

Section 333 of Public Law 112–95 also requires the Secretary to determine whether the operation of UAS subject to this rule would pose a threat to national security. Part 107 will expand small UAS operations in the NAS to include non-hobby and non-recreational operations. Under part 107, these operations will be subject to specific requirements, such as being able to operate only during daylight (or civil twilight if there is anti-collision lighting) and only within visual line of sight of the remote pilot in command, the person manipulating the flight controls of the small UAS, and, if applicable, a visual observer.

In addition, the remote pilot in command of the small unmanned aircraft must obtain an FAA-issued remote pilot certificate with a small UAS rating. The process for obtaining this certificate includes the same TSA-review procedures that are currently used under 49 U.S.C. 46111 in order to screen out airman-certificate applicants who pose a security risk. Because the above provisions will limit the security risk that could be posed by small UAS operations subject to this rule, the Secretary proposed to find that these small UAS operations will not pose a threat to national security. The Department invited comments on this finding, and around 45 individuals and organizations commented on this subject.

Several commenters, including Aerius Flight and NRECA, explicitly agreed with the Secretary's proposed finding that small UAS operating under part 107 will not pose a threat to national security.

A number of other commenters identified ways in which small UAS could be used to threaten national security. Numerous commenters, including the International Brotherhood of Teamsters, American Fuel & Petrochemical Manufacturers, and Institute of Makers of Explosives, discussed the potential use of small UAS for criminal or terrorist purposes. The Teamsters noted several recent high-profile security breaches in the United States and Japan involving small UAS, and suggested that allowing package delivery would have the unintended result of facilitating the delivery and deployment of dangerous substances.

The Edison Electrical Institute and the American Petroleum Institute expressed concerns about the potential threat posed by small UAS to the nation's critical energy infrastructure. API suggests that petroleum and natural gas storage and transportation infrastructure (*e.g.,* pipelines) are critical to national security, and therefore the final rule should prohibit the unauthorized use of small UAS "within appropriate limiting distance" from such facilities or operations as refineries, distribution terminals, pipelines and similar infrastructure.

The Electronic Privacy Information Center provided great detail on the vulnerability of UAS to hacking, and stated that "[t]he integration of drones into the NAS will mean that thousands of new, hackable devices will be hovering over our homes and streets without any clear security guidance, despite known vulnerabilities." EPIC argued that the weak security of the civil GPS system presents a danger to UAS operators and to the general public, and that the FAA must address and mitigate these vulnerabilities before UAS are integrated into the NAS. One individual argued that because UAS radio frequencies can be jammed, UAS pose a threat to national security.

Other commenters, including Planehook and the Travelers Companies, noted that there is no TSA vetting requirement for hobbyist operations conducted in accordance with section 336 of Public Law 112–95, and suggested that this will serve as a preexisting loophole for remote pilots with nefarious designs who may wish to evade security screening. Planehook further stated that many hobbyists already conduct operations in violation of the provisions of section 336, and that this may be an indication of the level of noncompliance with part 107 that the FAA should expect.

The South Dakota Department of Agriculture connected the issue of national security with those of privacy and personal property. Asserting that our food supply is a matter of national security, the SDDA questioned why the FAA was leaving to the states, rather than addressing nationally, the areas of agricultural intellectual property (*i.e.,* photographic crop monitoring) and other operations over private agricultural land.

In response to the comments raising various ways in which small UAS may be used to threaten national security, the Department notes that many of the examples provided would be in violation of part 107. For example, hacking or jamming a small UAS and taking over its functions would be in violation of the part 107 provisions prohibiting reckless operations, § 107.23. The provisions of this rule are also not the only legal requirements that may be applicable to small UAS operations; there are additional Federal and State laws and regulations that may criminalize certain UAS activity. For example, 18 U.S.C. 32 criminalizes the willful destruction of an aircraft or aircraft facilities. Hacking a small UAS may also violate Federal anti-hacking statutes such as the Computer Fraud and Abuse Act (18 U.S.C. 1030) as well as State and local anti-hacking laws. The Anti-Terrorism Act also serves as a deterrent for operating small UAS in a manner that threatens national security. A remote pilot willfully using his or her small UAS to, for example, destroy an aircraft or cause death or serious bodily injury, may be subject to the criminal penalties described in such statutes. The FAA notes that these additional laws and regulations would likely apply to hobbyists as well.

With regard to hacking specifically, the FAA notes that the visual line-of-sight requirement in this rule serves as a highly effective detection tool for hacking activities. A skilled hacker may be able to manipulate technological monitoring systems to make it appear that no hacking is taking place. However, because this rule requires a human being to personally maintain visual line of sight of the unmanned aircraft, a hacker will be unable to manipulate human vision to make it appear that a compromised UAS is behaving normally. Thus, a remote pilot in command will be able to quickly notice whether someone else has taken control of their small UAS and alert the appropriate authorities.

In response to the various commenters concerned about surveillance of airports, energy infrastructure, and agricultural intellectual property, the security risk associated with small UAS is far less than that posed by manned aircraft, to the extent such activities are not in violation of existing laws. Small UAS are unable to support the advanced level of surveillance equipment manned aircraft can carry. In addition, because of fuel and power limitations, small unmanned aircraft flight times currently do not exceed one hour, and the average small unmanned aircraft that is available to a consumer has a maximum flight time capability of 30 minutes or less. Unmanned aircraft on the larger side of the small UAS spectrum will generally have even shorter flight times because the heavier small unmanned aircraft require more energy to stay aloft. The provisions of this rule, which include a prohibition on nighttime operations and a requirement for the remote pilot to remain within visual line of sight of the aircraft, also impose restrictions that would severely limit possible nefarious surveillance that could be conducted using a small UAS. As such, the Department finds that small UAS, which are less capable than many other methods of surveillance currently available, are not a threat to national security when operated in accordance with part 107.

A number of commenters argued that, given the ease with which a small UAS can be purchased and deployed, it is unlikely that a bad actor would submit to the remote pilot certification process including TSA security vetting. Commenters, including Matternet, NetMoby, and the UAS America Fund, stated that only well-intentioned and law-abiding remote pilots will submit to the TSA vetting that is included in the remote pilot certification process. CAPA generally agreed with the TSA vetting provision, but worried that the rule will not sufficiently address situations in which a remote pilot is initially cleared by the TSA but later becomes a security threat.

The Department does not agree with the commenters that TSA vetting as required by statute (49 U.S.C. 44903(j)(2)(D)(i)) is an insufficient method to identify bad actors who wish to operate small UAS. The Department agrees that a bad actor may decide not to obtain a remote pilot certificate and submit to TSA security vetting procedures. However such an individual would be in violation of FAA regulations that require a remote pilot certificate and TSA vetting if he or she acts as a remote pilot in command. Adding more regulations for this individual to ignore would not increase the deterrent value of the FAA's regulations but would simply impose an additional burden on individuals who seek to operate lawfully. The FAA notes that after initial vetting, TSA conducts recurrent or daily vetting to ensure that certificate holders do not subsequently become a security threat. All FAA certificate holders are subject to this recurrent vetting, which serves to identify any certificate holder that may later become a security threat.

The Department recognizes that this rule will, in certain circumstances, allow a person without a remote pilot certificate, and therefore not subject to TSA vetting, to manipulate the controls of a small UAS. However, this may only be done under the supervision of a certificated remote pilot in command who must have the ability to immediately take control of the aircraft at any time. Therefore, although there may be circumstances under which a non-certificated, non-TSA-vetted individual is manipulating the controls of a small UAS, under no circumstances will that individual be able to use the small UAS to jeopardize national security because he or she will be supervised by a certificated remote pilot who can wrest control of the vehicle at any time during the operation. This framework is similar to the manned-aircraft framework of part 61, which, in certain circumstances, allows an uncertificated individual to manipulate the controls of an aircraft under the supervision of a certificated airman.

3. Airworthiness Certification

Pursuant to section 333(b)(2) of Public Law 112–95, the NPRM proposed not requiring small UAS to obtain airworthiness certification if the small UAS operation satisfied the provisions of proposed part 107. Proposed part 107 would require that an operator maintain the small UAS in a condition for safe operation, and would prohibit an operator from operating a small UAS unless it was in a condition for safe operation. This condition would be determined during a required pre-flight inspection.

More than 40 commenters supported the Department's proposal not to require an airworthiness certificate for small UAS. Many commenters favored not requiring an airworthiness certificate under this rule because it would be a burdensome process that would stifle technology advancements and delay research.

Several commenters said airworthiness certificates are unnecessary because safety concerns can be mitigated by other means. The Kansas Farm Bureau and Continental Mapping Consultants, for example, said the requirements to maintain a small UAS in condition for safe operation and to conduct a preflight inspection are adequate for maintaining safety.

Two commenters, the Small UAV Coalition and Modovolate Aviation, noted the expense of a type-, production-, or airworthiness certification requirement for small UAS. Modovolate Aviation stated that airworthiness certification "would impose unwarranted costs on vendors and operators of small UAS, discouraging their commercial use, and thus blunting their contribution to economic growth and American international competitiveness." Modovolate Aviation also asserted that delays caused by an airworthiness certification requirement would render candidate vehicles obsolete by the time they are certificated and would encourage operation of uncertificated vehicles.

Several commenters recommended airworthiness certification in limited circumstances. The City of Phoenix Aviation Department said all UAS operating in airspace adjacent to airports should be "airworthiness certified." One commenter said the FAA should require large UAS (which he defined as "rotary craft greater than 20 kg and fixed-wing between 12 and 24 kg") to have an FAA airworthiness certificate, "which is civilian UAV specific, and not as stringent as the current COA." Another individual commenter said small UAS should not be allowed to operate over others' property or persons, and no closer than 500 feet unless they have an airworthiness certificate. Reabe Spraying Service said small UAS that fly over or within 100 feet of a person, vehicle, or occupied building that is not part of the operation should have a manufacturer-provided airworthiness certificate and must come with a manual that outlines all required maintenance and part life limits.

Finally, a number of commenters opposed the Department's decision not to require small UAS to obtain an airworthiness certificate. NAAA and the Colorado Agricultural Aviation Association (CoAA), for example, said such certification is necessary to ensure small UAS can safely operate in the NAS without posing a hazard to persons or property.

One commenter noted that two weeks prior to publication of the NPRM, he presented data from the Army to several FAA engineers at a meeting of the RTCA, and the agreement was that many of the small UAS "mishap issues" would be solved through airworthiness certification. The commenter included with his comment files from presentations to the American Society of Safety Engineers and the International System Safety Society, which he said highlight the importance of airworthiness certification of small UAS.

Air Tractor said there should be a set of certification rules addressing the reliability of control systems for small UAS that are similar to the rules for civil certification of aircraft. The commenter stated its belief that the FAA has little knowledge of the quality, environmental performance, and software reliability of today's commercial off-the-shelf small UAS control systems. The commenter said that, at a minimum, these systems should be certified, inspected, and tested to ensure reliable operations.

Unmanned aircraft technologies continue to evolve at a rapid pace. The Department acknowledges that rapidly evolving technologies could face obsolescence by the time the certification process is complete. While the Department does consider such factors, the agency does not believe that this issue alone would warrant its choosing not to require airworthiness certification. Instead, the Secretary finds that operation in accordance with part 107 sufficiently mitigates the safety risk posed by a small unmanned aircraft.

To operate under part 107, a small unmanned aircraft must remain within visual line of sight of the remote pilot in command and may not fly over a person not directly participating in the flight operation. If commercial operation over people is desired, then the remote pilot will have to obtain a waiver by demonstrating that the operation will not decrease safety. The aircraft may be evaluated during the waiver process to ensure it has appropriate safety systems and risk mitigations in place for flight over people.

The final rule also does not permit flight operations in Class B, C, or D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless the remote pilot in command has prior authorization from the air traffic control facility having jurisdiction over that airspace. This operational requirement will mitigate risk and ensure safety around airports without the need for further equipment or certification requirements.

These and other part 107 requirements significantly reduce the risk of a mid-air collision or the likelihood that the unmanned aircraft will fall on top of a person standing underneath it. Additionally, with limited exception, the small unmanned aircraft may not fly higher than 400 feet AGL, which further separates that aircraft operation from most manned-aircraft operations in the NAS.[160] Because of the significant risk mitigation provided by the operating rules of part 107, an airworthiness certification requirement would not provide sufficient additional mitigation to justify the costs of requiring all small UAS operating under part 107 to obtain airworthiness certification.

Some commenters recommended that small UAS vendors and manufacturers be required to aid airworthiness by providing maintenance manual instructions or conducting testing. An individual commenter who supported the FAA's decision not to impose airworthiness certification requirements on small UAS nevertheless urged the FAA to implement regulations that require small UAS vendors to provide maintenance manuals "such that the operator can indeed comply with the airworthiness requirements in a systematic way to allow 'safe operation.'" ArgenTech Solutions recommended the FAA require each UAS manufacturer to obtain a limited special purpose certification for small UAS. The commenter suggested the certification include operation and testing at one of the FAA-authorized test sites to certify several minimum attributes. Another commenter, Kansas State University UAS Program, favored self-certification by either the operator or manufacturer using industry consensus standards.

While the FAA will not mandate that manufacturers provide instructions to determine if the aircraft is in a condition for safe operation, the agency encourages this practice. Many aircraft manufacturers, such as DJI, already provide this for their aircraft. Aircraft that are sold with such guidance may benefit from lower insurance rates when compared to equivalent aircraft that do not provide the documentation.

In developing the NPRM, the Department considered using industry consensus standards for airworthiness determination. However, consensus standards are still under development and thus cannot be used as the sole mandatory means of compliance. Additionally, a performance standard requiring the remote pilot to mitigate risk but giving him or her discretion to use non-technological mitigation will afford more flexibility to small UAS operations than airworthiness and technology-dependent requirements.

One commenter suggested that section 333(b)(2) is intended only for temporary use until a "lasting airworthiness means" is implemented.

The Department disagrees with the argument that section 333(b)(2) was intended to be temporary. The statutory language in section 333(c) specifically requires the Secretary to "establish requirements" for the safe operation of UAS that meet the requirements specified in section 333. Section 333(b)(2) states that the Secretary "shall determine . . . whether a certificate of waiver, certificate of authorization, or airworthiness certification under section 44704 of title 49, United States Code, is required for the operation of unmanned aircraft systems. . . ." [161] There is no language in section 333 indicating that such requirements, if established, must be temporary.

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[160] 14 CFR 91.119.

K. Miscellaneous Provisions

1. Mandatory Insurance

Although not specifically discussed or proposed in the NPRM, several commenters raised the issue of liability insurance. For the reasons discussed below, this rule will not include a liability insurance requirement.

Approximately 30 commenters, including NAAA, Property Drone Consortium, and Northrop Grumman Corporation, supported the inclusion of a liability insurance requirement in the final rule. These comments argued that: (1) Other countries require liability insurance for small UAS operations; (2) liability insurance would incentivize safe operations and encourage operators to keep pace with technological developments; and (3) small UAS operations are analogous to automobile operations, which require liability insurance.

This rulemaking is being jointly conducted by the FAA and the Office of the Secretary of Transportation (OST). The FAA statutes applicable to this rulemaking do not authorize the agency to impose mandatory insurance requirements. Thus, the FAA does not have jurisdiction to require small UAS operations subject to this rule to obtain insurance coverage.

Similarly, OST also lacks authority to impose liability insurance requirements on small UAS operations covered by this rule because those operations do not rise to the level of air transportation.[162] However, the Department emphasizes that remote pilots who offer these types of services are responsible for the operation, and could be held liable for any injury or damage that could result. Prudent remote pilots should evaluate their existing insurance policies to determine whether they have appropriate coverage for these operations.

2. Test Sites

To further facilitate the integration of UAS into the NAS, the FAA selected six UAS Test Sites to test UAS technology and operations. The NPRM invited comments on how the FAA can improve or further leverage its UAS Test Site program to encourage innovation, safe development, and UAS integration into the NAS.

The Oklahoma Governor's Unmanned Aerial Systems Council asserted that the legal restrictions imposed on the FAA, prohibiting the agency from "directing" the Test Sites under Other Transaction Agreements, leads to an unnecessary level of ambiguity and bureaucratic confusion regarding Test Site missions and objectives. The commenter concluded that it is unlikely that the industry or the FAA will benefit from continued operation of the Test Sites under the current regulatory and OTA structure.

Modovolate Aviation said the FAA should be more explicit about the areas of research, demonstration, and testing that would be most helpful in filling the data void referred to in the NPRM.

Aviation Management recommended the agency do the following: (1) Establish guidance to all academic institutions doing UAS research that defines the project, type, or nature of UAS research that the FAA needs to successfully pursue integration of UAS into the NAS; (2) define the means and methods that will allow defined research to be submitted, categorized, classified and evaluated in a "national library" of UAS searchable research; and (3) work with Congress to establish greater levels of UAS research funding.

The New Jersey Institute of Technology claimed that the NPRM does not encourage entities to do business with the FAA-designated Test Sites or other air ranges, and that the development of products or services may be inhibited for some small UAS components or airframes. The commenter claimed that universities and other institutions related to Test Sites may reasonably be concerned that educational, research, and academic potential may be lost due to the prohibitive proposed rules. The commenter also pointed to communication issues between the FAA and the designated Test Sites, and suggested that the FAA elaborate and specify the roles and obligations of all current users, which would enable a reasonable discussion as to the effectiveness of an anticipated FAA UAS Center of Excellence.

NBAA recommended that the FAA "define parameters that can safely accommodate continued research and development of advanced UAS capabilities" and provide the future Center of Excellence with authority to approve advanced UAS operational or testing capabilities in coordination with ATC.

AIA said the FAA could make better use of Test Sites by doing the following: (1) Provide a detailed vision of the specific types of data Test Sites should provide to further standards development and overall UAS integration; (2) provide funding mechanisms for operation of Test Sites; (3) provide an opportunity to designate private testing areas within the current sites; (4) expand issuance of COAs to designees at Test Sites and prioritize such COA requests; and (5) address barriers to use that are limiting private enterprise use of the sites, such as ownership and control of intellectual property and data rights.

The FAA has been exercising every effort toward greater facilitation of the Test Sites. To that end, the FAA is working closely with the Test Sites to guide research programs toward specific goals such as System Safety & Data Gathering, Aircraft Certification, Command & Control Link Issues, Control Station Layout & Certification, Ground & Airborne Sense & Avoid, and Environmental Impacts that will help the FAA safely integrate UAS into the national airspace system. In addition, the FAA has worked with the Test Sites, industry, and the general public to quickly discern opportunities, design research challenges, and identify priorities. Many of the research areas suggested in the comments are being addressed in current and planned research sponsored by the FAA, or by one or more of its government or industry partners. The FAA continues an active engagement with the Test Sites, the Center of Excellence, and other research partners to undertake research that will facilitate future flight operations and airspace access.

Lastly, it bears noting that UAS operations in the NAS continue to be developmental. As additional acceptable parameters are demonstrated for safe UAS operations, the FAA may adopt those parameters. With regard to providing the Center of Excellence with authority to approve advanced UAS operational or testing capabilities in coordination with ATC, the FAA remains open to considering various forms of delegated authority where a delegation is legally possible. The FAA is working to expedite the process of authorization of operators and UAS, but faces limitations in terms of manpower and the sheer lack of technological information available.

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[161] Public Law 112–95, Sec. 333(b)(2).

[162] As discussed in section III.C.1 of this preamble, air carriers (which are not included in this rule) are subject to liability insurance requirements. *See* 49 U.S.C. 41112 (noting that the Secretary may issue a certificate to a citizen of the United States to provide air transportation as an air carrier only if the citizen complies with the Secretary's orders and regulations governing the filing of an insurance policy or self-insurance plan).

Many commenters were concerned about lack of funding and an ineffective COA process. UPS discussed two factors it believes have impeded the usefulness of the Test Sites: inadequate funding and the amount of time it takes to obtain the authorizations necessary to fly. UPS noted that in the absence of suitable government funding, the Test Sites look to their "customers" for funding, which creates a situation where the fees charged to use the Test Site exceed the economic benefit to the customer. UPS said that as a result, many operators seek a section 333 exemption to allow them to do research and development on their own property. UPS also asserted that the utility of Test Sites has been hampered by the amount of time it takes to obtain the authorizations necessary to fly. To remedy this problem, UPS proposed the FAA grant a blanket authorization to UAS of certain weight and performance standards to operate at Test Sites.

Several other commenters also pointed to increased funding and a better COA process, among other things, as necessary to improve the Test Site program. Like UPS, State of Nevada, the Nevada Institute for Autonomous System, and the Nevada FAA-designated UAS Test Site, commenting jointly, said the effective use of the Test Sites has been hindered by a lack of funding and by the fact that the UAS industry can "bypass" the Test Sites by obtaining section 333 exemptions. The commenters said that Congress needs to provide funding for FAA to: (1) Operate the Test Sites; (2) provide Test Sites with "Broad Area COAs" that are aircraft-agnostic; and (3) allow the Test Sites to immediately begin testing the small UAS rules proposed in the NPRM to either validate the proposed rules or identify gaps and issues, and to provide standards for small UAS SMS procedures, airworthiness processes, training, and aircrew qualifications. Another commenter said something must be done to relax the regulation preventing Nevada from using its designation as a "commercial UAS test range." The commenter suggested that the COA procedure and approval process be expedited at the Federal level, or that Nevada Test Sites be given autonomy to approve COAs.

Several commenters also discussed the need for additional funding of Test Sites. One commenter said the FAA should provide funding to the Test Sites, as well as develop the organizational architecture needed to facilitate research between the Test Sites and the Center of Excellence. Another commenter said Test Sites should be partnered with funded organizations "at a level that also allows the pool of Test Sites to handle the demand and to address more complicated operations that exceed the limited proposed rule." One commenter said that due to lack of funding, limited support, and process management gaps, very few resources have been directly and solely assigned to the Test Site program. The commenter recommended prioritization, simplification, and a wide research scope be established at the Test Sites. Another commenter said the FAA needs to establish an informed set of research objectives and ensure coordination between emerging UAS manufacturing companies, potential UAS markets, and academic researchers at the Test Sites and the Center of Excellence. The commenter also said that a significant amount of testing will be done by academia and industry outside the Test Sites under COAs and exemptions, and that the FAA should take advantage of those efforts through Cooperative Research and Development Agreements (CRADA) and other agreements.

Texas A&M University-Corpus Christi/LSUASC also recommended the FAA enable Test Sites to conduct operations without having to apply for COAs for every research operation. The commenter also recommended that these "blanket COA" operations at Test Sites be permitted at less than 200 feet AGL. In addition, the commenter said the FAA needs to engage the Test Sites' research capacities. The commenter claimed that Test Site proponents have offered significant UAS research capacities to the FAA (*e.g.*, expertise and infrastructure), but the agency has not indicated that these capacities will be used in the development of technologies to enable safe integration of UAS into the NAS. Finally, the commenter said the FAA needs to incorporate applicable portions of the proposed small UAS rule into test-site other transaction agreements (OTAs), which it said would have two residual effects—first, it would assist in the validation of the rules with actual operations, and, second, it would provide the Test Sites some leverage towards being financially sustainable by enabling them to offer services to public- and private-sector entities without burdensome administrative costs (*e.g.*, COA applications).

Regarding the COA process, the FAA has already issued "blanket COAs" to the Test Sites which are not aircraft specific. However, the FAA is also responsible for overseeing the operations of the 6 Test Sites, and ensuring each Test Site sets up a safe-testing environment and adheres to strict safety standards. The FAA must exercise every caution to ensure that the introduction of UAS operations into the NAS is executed in a manner that will provide the greatest possible safety protections for manned aircraft as well as people or property on the ground. Thus, part 107, which reflects the safety considerations addressed during the course of this rulemaking, will extend to allowing operations at the Test Sites. Operations that conform to part 107 will require no additional authorization, obviating additional blanket COAs. Operations that are outside the scope of part 107 will require waivers to portions of part 107; this requirement is necessary to ensure that UAS vehicles are evaluated for safety on a case-by-case basis.

Regarding the costs associated with UAS development and other related issues, the FAA cannot interfere with market pricing. The UAS industry, like any other, is subject to the economic structure of the United States and prices are typically controlled by supply and demand. With regard to the Test Sites and what they charge for services they provide, the FAA cannot interfere because the FAA is not charged with subsidizing the cost of operations at the Test Sites. The sites must be allowed to obtain funding for their continued operation.

In regards to funding, Congress has not appropriated Federal funds for Test Site operations or research. If the FAA obtains funding specific to UAS, it will make those funds available to operators in accordance with the legislative language appropriating the funds.

Several commenters proposed specific areas of testing for the FAA-designated Test Sites to undertake. Modovolate said energy dissipation tests should be conducted to obtain data on energy dissipation in collisions between small UAS and manned aircraft, particularly helicopters. The commenter said these collision energy dissipation tests should focus on collecting data on the effects of a collision with small UAS that are made of various types of frangible materials.

The University of North Dakota's John D. Odegard School of Aerospace Sciences—which is part of one of the six established Test Sites—said the FAA and academic institutions should work together to study 13 areas of UAS operations, including extended VLOS and BVLOS operations, operations over persons, and nighttime operations. The commenter urged all parties to work with Congress to establish levels of funding for this research, which it said will lead to future integration of UAS into the NAS.

Exelis said the FAA should use the designated Test Sites to prove and demonstrate the safety and operations of technology that enables beyond-visual-line-of-sight UAS operations. To that end, the commenter said the Test Sites should be granted COAs that allow for BVLOS operations. The commenter also said the Test Site program can be further leveraged by undertaking testing of BLVOS operations in real-world environments.

The State of Nevada, the Nevada Institute for Autonomous System, and the Nevada FAA-designated UAS Test Site, commenting jointly, stated that the FAA should enable specific research and development at the designated Test Sites "to identify operating limitations that could be relaxed based on technological advancements." More specifically, the commenters said the Test Sites and future FAA UAS Center of Excellence can provide assistance in developing standards which delineate the acceptable performance of sensor technologies to satisfy "see and avoid" or "sense and avoid" requirements.

The National Association of Broadcasters, National Cable & Telecommunications Association, and Radio Television Digital News Association, commenting jointly, urged the FAA to increase its efforts to facilitate and encourage use of the existing UAS Test Sites to expedite UAS research and development and to develop data and safety records for unmanned aircraft to support their expanded use for breaking news coverage, sports coverage, and video production, including over populated areas. The commenters also pointed to research that is currently being conducted by universities on the use of small UAS for newsgathering and reporting purposes, and encouraged the FAA to use the results of that research to further refine the small UAS rule.

CTIA—The Wireless Association said the FAA should expeditiously grant any requests from the commercial wireless industry to test its technologies with small UAS at any of the FAA's six designated UAS Test Sites, as well as in various geographic locations pursuant to the FAA's section 333 exemptions and experimental aircraft certification processes. The commenter asserted that researchers can collect data on the networks' reliability and robustness of signal and submit their findings to the FAA and its supporting committees. The commenter further asserted that the FAA should incorporate the results of this testing when considering spectrum to support small UAS operating within and beyond the visual line of sight.

The Air Medical Operators Association said the UAS Test Sites are an excellent area to test the ability of UAS to avoid approaching aircraft. The commenter asserted that UAS must be tested to ensure to the flying public that the required separation is sufficient to allow the UAS operator to maneuver away from manned aircraft.

One commenter recommended the Test Sites conduct testing on the visibility to manned aircraft of small UAS of various sizes and speeds and with various visibility treatments under a variety of conditions. The commenter also recommended testing various see-and-avoid technologies under a variety of test conditions and testing to help determine anti-collision lighting requirements. Another individual commenter said the use of UAS to transport property should be tested at one of the designated Test Sites.

The FAA welcomes the commenters' suggestions for UAS research, and encourages the Test Site sponsors to consider these recommendations as further testing parameters. Several of the comments coincide with ideas that the FAA has, or currently is in the process of adopting. The speed at which advanced technologies can be adopted is an issue that must be addressed step by step. Wireless operations and collection of data are both subjects that the FAA is examining. Wireless operations, however, must first be able to demonstrate the capability to operate under control and safely. Additionally, data collection is subject to a variety of laws. On occasion, additional limitations are imposed by desire of the operators.

NetMoby suggested that one method to improve the Test Site program is to increase the number of Test Sites. Specifically, the commenter urged the FAA to establish a minimum of one Test Site per State (with no maximum). Travelers United similarly said the designation of only six Test Sites is "unnecessarily limiting," although it did not propose an alternative number of sites. The commenter did say that Test Sites should be able to expand their airspace further into Class G airspace within their region, to allow for more operations in different geographies and population densities.

The number of Test Sites established by the FAA was specifically designated by Congress. Section 332 of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) directed the FAA to "establish a program to integrate unmanned aircraft systems into the national airspace system at 6 test ranges." The FAA therefore does not have the authority to establish additional Test Sites and also conform to its Congressional mandate.

One commenter said the FAA can make better use of its six designated Test Sites by designating them as "Qualified Entities," as is done in Europe. NetMoby recommended the FAA establish standards for accredited academic institutions to apply for authority to operate as a Test Site, with stringent qualifications and reporting requirements for each test-site. The University of Illinois at Urbana-Champaign similarly suggested that universities and others should be permitted to conduct research on their own properties, so long as the institutions are willing and able to implement adequate safety measures. Another commenter said private individuals and corporations should be allowed to set up private Test Sites for developing UAS.

In the United Kingdom, the government has established "national qualified entities" that conduct assessments of UAS operators and make recommendations to the Civil Aviation Authority whether to approve those operators. In the United States, Congress has mandated the FAA under 49 U.S.C. 44701 to prescribe standards in the interest of aviation safety. In response to comments suggesting that entities outside of the six selected Test Sites should be permitted to conduct research on their properties, the FAA notes that nothing prevents other entities from conducting small UAS testing within the confines of part 107. For UAS operations in which the small unmanned aircraft weighs less than 55 pounds that are not permitted under part 107, an entity may seek a waiver, provided the entity intending to conduct testing provides evidence that that the proposed operation can safely be conducted under the terms of a certificate of waiver.

Additionally, the FAA developed a process under FAA Order 8000.732A to appoint UAS Designated Airworthiness Representatives (DARs) for UAS Certification at UAS Test Sites. These DARs are specifically authorized to issue special airworthiness certificates in the experimental category for research and development, market survey, and crew training, at UAS Test Sites. Where UAS Test Sites are focused on public aircraft operations, this additional flexibility provides UAS Test Sites with the ability to conduct specific civil operations under a special airworthiness certificate/experimental category.

Although it did not mention UAS Test Sites, specifically, the Washington Aviation Group recommended that the FAA gather information on the frequency with which small UAS can be expected to fail, and on the prevalence of return-to-home technology. The Washington State Department of Transportation, Aviation Division—which also did not specifically mention UAS Test Sites—recommended the FAA initiate a study to examine hobbyist UAS activities in an effort to determine whether registration of some hobby UAS aircraft may now be appropriate. Event 38 Unmanned Systems said the FAA must secure appropriate research and development funding, and conduct research on any proposed rule implementation, in an open and transparent manner with particular attention paid to non-biased review and quality assurance.

The FAA has established requirements (in the Registration Rule) for registration of all unmanned aircraft and aircraft classified as model aircraft. As mentioned previously in regards to funding, Congress must appropriate Federal funds to the FAA for specific types of research and development.

3. Noise and Environmental

a. The National Environmental Policy Act

The Department of Transportation has determined that this proposed action qualifies for categorical exclusion pursuant to Paragraph 4.c.5 of DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979) and FAA Order 1050.1F, paragraph 5–6.6(f).[163] Paragraph 4.c.5 of DOT Order 5610.1C incorporates by reference actions identified by FAA as categorical exclusions.

Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion (CATEX), the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* A number of commenters expressed concern that there may be noise and environmental impacts as a result of this rule. Based on the information known at this time and what is reasonably foreseeable, FAA does not find any extraordinary circumstances that preclude use of a CATEX for implementation of this rule. For the reasons discussed below, the FAA will not make any changes to the rule based on these comments.

b. Noise

Approximately 60 commenters expressed some concern about the noise produced by small UAS. The comments ranged from very general to specific. One commenter specified the need for a noise metric to measure or control the noise from UAS. Another requested noise certification and operating limits to be established. Many of the comments regarding noise expressed concern over the potential effect on wildlife, such as startling nesting birds. One commenter described the potential for human noise exposure as "considerable" since a person in New York City could be exposed to "dozens" of flights a day, and concluded that small UAS noise posed a greater problem than noise from airports. Another commenter indicated that the rerouting of manned aircraft for safety reasons when small UAS are operating in the same area might force the noise of larger manned aircraft to be unfairly concentrated on certain people.

The Professional Helicopter Pilots Association stated that noise emissions from small UAS operations should be below 65 DBE under all operating conditions (we believe the commenter meant "dBA (A-weighted decibels")). The CAFE Foundation stated that the NPRM omitted limits for noise at a measured sideline distance, and stated that noise is "the principal source of the public's complaints about aircraft." The commenter concluded that "[t]he rules of operation for UAVs need to include certification standards for their noise emissions at a prescribed distance," giving an example of 48 dBA at a 20-meter sideline distance that would result in a day-night level (DNL) of 54.7.

Turning first to the potential environmental impacts of the proposed rule, based upon FAA's forecasts and the best available science and information, the FAA has determined that this rulemaking qualifies for the CATEX in FAA Order 1050.1F, Paragraph 5–6.6(f). The FAA examined the potential noise impacts considering the projected amount and type of Small UAS operations. The FAA has documented the categorical exclusion, including the potential for extraordinary circumstances and review of the potential for extraordinary circumstances, and has placed a copy of it in the docket for the final rule.

The NPRM did not propose noise certification standards or operating limitations for small UAS. As to the comments concerning noise limitations, there are two aspects—the formally tested limits of noise that are established when an aircraft is certificated by the FAA, and noise operating limits that apply to certain aircraft. Operators of UAS seeking type certification are subject to the limits for smaller non-jet aircraft listed in 14 CFR part 36 Appendix G (fixed-wing) and Appendix J (helicopters). Appendix G imposes a noise limit of 70 dBA for takeoff noise from a single engine airplane weighing no more than 1,257 pounds that was manufactured on or after February 3, 2006.[164] The small UAS to which part 107 will apply are considerably smaller, less than 55 pounds. The commenters requesting noise certification standards as part of this rule did not provide any evidence to show that the noise emitted by the Small UAS subject to this rule would exceed the current limits of part 36 Appendix G or J. The FAA recently used Appendix G to certificate two small unmanned aircraft, one with a takeoff weight of 44 pounds and the other 13.4 pounds. These aircraft were subject to the full noise test procedures specified in part 36, Appendix G. The resulting noise levels (53.2 dBA and 27.0 dBA) were substantially lower than the 70 dBA limit in Appendix G, by margins of 16.8 dBA and 43 dBA, respectively.

While the FAA has chosen not to require type certification of small UAS subject to this rule, the FAA is gathering data for all UAS on which it may base future certification standards, especially for those UAS that exceed the 55-pound weight limit of part 107 or that use more advanced propulsion systems that would affect their noise profiles. The FAA may apply the requirements of part 36 separately to UAS under the FAA's authority to regulate noise in the future. At this time, however, the FAA does not believe there is sufficient evidence to warrant such a standard. If full type and airworthiness certification for a UAS is applied for as a means to operate outside part 107 restrictions, the noise certification standards of part 36 already apply as they would to any manned aircraft, including the required noise tests.

For similar reasons, the FAA lacks sufficient evidence at this time to justify imposing operating noise limits on small UAS. The only operating noise rules in the United States apply to turbojet aircraft and supersonic operations.[165]

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[163] FAA has determined that this final rulemaking is covered by the CATEX described in paragraph 5–6.6(f) of FAA Order 1050.1F. In the NPRM, the FAA relied upon the categorical exclusion in section 312(f) of FAA Order 1050.1E the NPRM the FAA has updated the order and the corollary provision in the new order is paragraph 5–6.6(f).

[164] 14 CFR part 36, Appendix G, Sec. G36.301(c).

The FAA considered the potential for noise impacts based on the projected amount and type of small UAS operations operating under this rule. Pursuant to 14 CFR part 150 land use compatibility guidelines incorporated by reference in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures (July 16, 2015), noise-sensitive areas such as residential, educational, health, and religious structures and sites are considered compatible land uses when the yearly day-night average sound level (DNL) is below 65. DNL is a cumulative noise metric, calculated by adding up the noise produced by individual aircraft, however, and does not directly correspond to the noise produced by an individual aircraft of any weight or size. To illustrate how the noise of an individual UAS affects the land use compatibility threshold, at 200 feet altitude over the measurement point, it would take 6,000 flights of the noisier of the two certificated UAS (at 53.2 dBA) over one 24-hour period to exceed the 65 DNL land use compatibility threshold; at 400 feet altitude over the measurement point, there would need to be 25,000 flights in one 24-hour period to exceed the land use compatibility threshold. The FAA does not anticipate this level of small UAS operations at any location in the United States, nor would the airspace over a particular location support such levels of activity. The FAA may revisit the issue of noise from small UAS in light of future operational experience and more noise data for all UAS.

c. Other Environmental Comments

A number of commenters raised air quality concerns with regard to small UAS operations that would be conducted under the proposed rule. Green Vegans and five individual commenters asserted that the aggregate number of small UAS operations that would be conducted under part 107 will result in a significant impact on air quality. In support of their claim, these commenters cited a report released by Volpe in 2013,[166] which projects a total number of UAS vehicles approaching approximately 250,000 by 2035, of which approximately 175,000 vehicles would be available for purchase from the commercial marketplace.

The individual commenters argued that the collective number of projected UAS in the report indicates that there are significant environmental impacts and/or extraordinary circumstances that require a more extensive NEPA review process. The commenters further suggested that the aggregate number of UAS would cause an impact on air quality. On the other hand, Kapture Digital Media suggested that the substitution of small UAS for manned aircraft in various applications would have a positive effect on air quality, since most small UAS use electrical power rather than fossil fuels. Two individual commenters also opined that small UAS operations would not adversely impact air quality.

The Clean Air Act established the National Ambient Air Quality Standards (NAAQS) for six pollutants ("criteria pollutants") that are the most common types of pollutants that can cause damage to humans and the environment. Those pollutants are: Carbon monoxide (CO), nitrogen dioxide (the most common of oxides of nitrogen gas), (NO2), ozone (O3), particulate matter ($PM_{2.5}$ and PM_{10}), sulfur dioxide (SO_2), and lead (Pb). Under the Clean Air Act, the FAA must determine whether promulgation of this rule has the potential to cause or contribute to any new violation of any standard in any area, increase the frequency or severity of any existing violation of any standard in any area, or delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The FAA currently allows small UAS operations comparable to the ones that will be enabled by this rule through an exemption process utilizing Public Law 112–95, section 333. As of this writing, the FAA has issued exemptions to allow over 3,385 small UAS operations. The majority of these operations used small UAS that were powered by electricity (*i.e.* through battery-powered electric motors) which generally do not produce the pollutants covered by NAAQS. Indeed, as noted by Kapture Digital Media and the individual commenters, the replacement of fossil-fuel-powered manned aircraft with electrically powered small UAS that promulgation of this rule will enable may even have a positive impact on air quality.

Based on information available about the type of equipment likely to be used (*i.e.*, battery-powered electric motors), emissions attributable to UAS operating subject to this regulation will not cause significant air quality impacts, and would not violate air quality standards. The FAA has no evidence that would change this conclusion. Therefore FAA has determined that air quality impacts from the small UAS rule are not extraordinary circumstances precluding the use of a CATEX.

Green Vegans stated that "the use and numbers of UASs/drones by industry, government agencies, and critically, hobbyists, who do not need permission to operate their drones, have increased dramatically." The commenter added that the "potential environmental and social impacts [of UAS use] are enormous." Green Vegans further asserted that the FAA cannot rely on a CATEX to comply with NEPA and stated that the FAA must prepare an Environmental Impact Statement (EIS) before proceeding further.

The Department of Transportation has adopted policies and procedures for compliance with the National Environmental Policy Act (NEPA), as implemented by Council on Environmental Quality (CEQ) regulations, in FAA Order 1050.1F, Environmental Impacts: Policies and Procedures. Among other things, DOT Order 5610.1C, paragraph 4.c.5, lists DOT actions that are normally subject to a CATEX, and incorporates by reference the actions identified by the FAA. FAA Order 1050.1F lists FAA actions that are normally subject to a CATEX. FAA Order 1050.1F, Paragraph 5–6.6(f) covers rulemaking actions (excluding those that if implemented may cause a significant impact on the human environment). Based upon its forecasts and the best available information, the FAA has determined that this rulemaking is covered by the CATEX in FAA Order 1050.1F, Paragraph 5–6.6(f), and will be documented pursuant to FAA Order 1050.1F, Paragraph 5–3. FAA does not find any extraordinary circumstances that would preclude the use of a CATEX.

The FAA also notes that this rulemaking has limited applicability to two types of UAS use cited by Green Vegans. First, as discussed in section III.C.4 of this preamble, Public Law 112–95, section 336 prohibits the FAA from conducting a rulemaking with regard to hobby/recreational operations that meet the statutory criteria specified in section 336. Section 336 provides an exception only for model aircraft that endanger the safety of the NAS, and this rule will codify that exception in part 101. Second, as discussed in section III.C.3 of this preamble, this rule will also not apply to public aircraft operations of small UAS that are not operated as civil aircraft.

Green Vegans and several individual commenters also argued that the "flood" of UAS predicted to fly in the NAS constitute extraordinary circumstances under paragraph 304 of FAA Order

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[165] *See* 14 CFR part 91, subpart I.

[166] *Technical Report, Version 0.1—September 2013* DOT–VNTSC–DoD–13–01 (February 2014).

1050.1E.[167] The commenters asserted that the high numbers of UAS will have an environmental impact on ecosystems and the human environment and this constitutes extraordinary circumstances.

In response, the FAA notes that, because electrically powered small UAS could replace fossil-fuel-powered manned aircraft, the environmental impact of small UAS operations could be a positive improvement in air quality and noise. At this time, the FAA has no information indicating that the implementation of this rule will result in any significant impacts, cumulative or otherwise. As such, the FAA has determined that there are no extraordinary circumstances that preclude categorical exclusion of this rule.

Green Vegans expressed concern that the FAA is ignoring the large numbers of hobby/recreational small UAS that would not be covered by part 107. The commenter suggested that community-based organizations would be unlikely to issue guidelines that include provisions for operating model aircraft in an environmentally responsible way. In response, the FAA considered the effects of small UAS operating under this rule in light of other UAS operations, and did not find any evidence that this rule was likely to directly, indirectly, or cumulatively create a significant environmental impact. The FAA also emphasizes that section 336(a) of Public Law 112–95 prohibits the agency from addressing in this rule model aircraft that are operated in accordance with section 336.

Approximately 20 commenters discussed the use of UAS in wildlife conservation and monitoring efforts. Most commenters expressed support for adopting UAS technology. NOAA stated that high-quality UAS operations could be very beneficial and offer significant cost savings and increase safety for endangered, threatened and trust species. The Nez Perce Tribe stated that it sees enormous benefits in the use of small UAS for management of salmon fisheries and other wildlife. The Nature Conservancy discussed the benefits of using UAS for monitoring sand hill cranes and other wildlife, and the increased safety that small UAS use would provide for wildlife biologists. Shell Exploration and Production Company described the potential use of UAS to monitor and observe endangered species and marine mammals.

On the other hand, several commenters, including Green Vegans, remarked on the danger that a small UAS traveling at up to 100 mph would present to migratory birds, mallard ducks, and other wildlife because birds might not be visible to small UAS operators. The Ventura Audubon Society expressed concern about the negative impacts the use of small UAS could have on nesting shorebirds. An individual commenter asserted that small UAS use can affect wildlife and manned aircraft in an unsafe manner, as evidenced by the aggregate number of bird and wildlife strikes every year. The commenter expressed concern that small UAS operations conducted under part 107 may interfere with birds and relied on the FAA Strike Report 1990–2012 in support of her comments.

The FAA agrees with the commenters that wildlife surveying and monitoring operations conducted under part 107 can have benefits for wildlife conservation. The RIA accompanying this rule contains a discussion of the many societal benefits that will be enabled by this rule, including wildlife conservation and monitoring efforts.

In response to commenters who expressed concerns about negative impacts to birds and other wildlife, the FAA emphasizes that this rule does not authorize the harassment, harming, or killing of birds, mammals, or ocean-dwelling animals. These types of actions are prohibited by other laws and regulations such as the Migratory Bird Treaty Act (see 16 U.S.C. 703; 50 CFR part 21), the Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA). The FAA emphasizes that in addition to satisfying the provisions of this rule, remote pilots of a small UAS will remain subject to all applicable laws, including environmental and wildlife laws.

The Nature Conservancy and several individual commenters expressed concern with wetlands and other ecosystems that provide habitat for water fowl.

Executive Order 11990, DOT Order 5660.1A, the Rivers and Harbors Act of 1899, and the Federal Water Pollution Control Act, as amended (commonly referred to as the Clean Water Act), address activities in wetlands. Executive Order 11990 requires Federal agencies to ensure their actions minimize the destruction, loss, or degradation of wetlands. It also assures the protection, preservation, and enhancement of the Nation's wetlands to the fullest extent practicable during the planning, construction, funding, and operation of transportation facilities and projects. The Clean Water Act provides the authority to establish water quality standards, control discharges, develop waste treatment management plans and practices, prevent or minimize the loss of wetlands, determine location with regard to an aquifer or sensitive ecological area such as a wetlands area, and regulate other issues concerning water quality.

It is not anticipated that this rule will involve land acquisition or ground disturbing activities that would affect coastal resources or wetlands. In regards to impacts to habitat, the rule is not intended to authorize encroachment into any habitats for waterfowl and FAA does not anticipate this rule causing significant impacts to such habitats.

The Nature Conservancy asked for less restrictive daytime-operations and visual-line-of-sight requirements, asserting that changes to these proposed provisions would improve their conservation efforts. "In sum, The Nature Conservancy views UAS as a critical conservation tool." Further, "[t]he Conservancy's envisioned use for UAS in California provides just one example of why the daytime operations requirement would limit the effectiveness of UAS as a conservation tool."

As discussed in section III.E.2.c.i of this preamble, the daylight-operations provision of this rule has been expanded to allow operations during civil twilight hours. This change will further enable small UAS operations under part 107, including operations conducted for positive environmental management. This change will also allow greater utilization of small UAS as a conservation tool in Alaska where, in the northern parts of that State, the sun does not rise for as many as 64 days a year.

With regard to visual line of sight, as discussed in section III.E.2.a of this preamble, this rule will generally implement the visual-line-of-sight provision as proposed. However, the FAA will consider waiving that restriction if an applicant seeking extended operational flexibility can demonstrate that his or her operation will have at least the same level of safety as an operation conducted within visual line of sight.

One individual commenter raised concerns about adverse visual impacts that could result from small unmanned aircraft flight. The commenter stated that the visual impact of seeing ". . . a drone rather than the natural scape is unfortunate." The commenter compared unmanned aircraft regulations to land use controls such as building heights being limited when feasible to reduce visual impacts to natural scenic corridors. The commenter also complained that at the commenter's local school yard, "teenagers are their (sic) learning to fly their drones."

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[167] Since the NPRM the FAA has updated the order and the corollary provision in the new order is paragraph 5–2.

Pursuant to FAA Order 1050.1F, (Paragraph 4–3, Exhibit 4–1) the FAA generally considers visual impacts that could:

> (i) Affect the nature of the visual character of the area, including the importance, uniqueness, and aesthetic value of the affected visual resources, (ii) Contrast with the visual resources and/or visual character in the study area, and (iii) Block or obstruct the views of visual resources, including whether these resources would still be viewable from other locations.

The FAA does not have evidence or data that the operation of small UAS under this rule would significantly affect the nature of visual character of an area, contrast with visual resources, or significantly block or obstruct the views of visual resources.

The FAA notes that the provisions of this rule (such as the visual-line-of-sight requirement, the maximum altitude limitation, and the restriction on operations in controlled airspace) limit the areas where a small UAS could be operated under part 107. Additionally, as discussed in section III.J.2 of this preamble, because of the limitations of current fuel and power-source technology, small UAS currently available to consumers have an average flight time of only 30 minutes or less. Some small UAS have maximum flight time of less than 10 minutes. Because of the regulatory and practical limitations on small UAS operations that will be conducted under part 107, promulgation of this rule will not result in significant visual impacts.

Berkey Williams asked the FAA to initiate formal government-to-government consultation with Indian Tribes, and the Green Vegans noted the need for Tribal participation under NEPA. Berkey Williams stated that formal government-to-government consultation with Indian Tribes is needed to properly identify and mitigate the impacts that small UAS may have on Tribal interests in Tribal territory. The Nez Perce Tribe and the Northern Arapaho Tribe filed comments indicating their interest in using small UAS for fish and wildlife management and agricultural purposes. The Northern Arapaho Tribe restated their previous request to initiate government-to-government consultation regarding the development and implementation of UAS on the Wind River Indian Reservation, and submitted comments on the NPRM concerning: (1) Waivers to the visual-line-of-sight requirement; and (2) recognition of Tribal authority to regulate or prohibit UAS use to protect against interference with traditional ceremonies and other activities.

Consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments,* and FAA Order 1210.20, *American Indian and Alaska Native Tribal Consultation Policy and Procedures,* the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to uniquely or significantly affect their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this rule. However, the FAA has entered into government-to-government consultation with the Northern Arapaho Nation on its general use of UAS. In addition, the Nez Pierce tribe has contacted FAA to discuss obtaining a section 333 exemption to operate small UAS under existing rules.

With regard to the specific issues raised by the Northern Arapahoe Tribe and the Nez Perce Tribe, the FAA notes that the requirements concerning airman certification and visual line of sight in this rule are not unique and significant environmental impacts on the Tribes. The FAA also notes the Northern Arapahoe Tribe's concerns about Tribal authority to regulate or prohibit UAS flights, but, as discussed in section III.K.6 of this preamble, this rule does not address preemption issues because those issues necessitate a case-specific analysis that is not appropriate in a rule of general applicability. The FAA notes, however, that state governments have historically been able to regulate the takeoffs and landings of aircraft within their state boundaries. The FAA anticipates that the Tribes would be able to exercise similar internal sovereignty with regard to the takeoffs and landings of small UAS within their territories. Thus, while preemption is beyond the scope of this rule, the FAA will conduct outreach to tribes seeking information about their ability to regulate small UAS operations conducted within their territory to see how their concerns could be addressed within the broader UAS integration effort.

NOAA asked the FAA to add a regulatory provision that would require the operator to ensure that a small UAS would not pose a danger to protected wildlife in the event of a loss of aircraft control. NOAA noted that it addresses this issue in its current guidance, such as the NMFS Marine Wildlife Viewing Guidelines. These guidelines recommend, in general, that the public keep a safe distance of 50 yards (150 feet) from dolphins, seals, and sea lions on the water or land and 100 yards (300 feet) from large whales on water or land. For all marine mammals, the recommended viewing guideline for aerial observations is 1,000 feet.

To the extent NOAA seeks compliance with applicable environmental statutes, such as the Marine Mammal Protection Act (MMPA), the FAA agrees that the pertinent NOAA regulations and guidance provide an excellent overview of the applicable requirements that must be followed by individuals who seek to operate in germane areas. These regulations and guidance may be found at: *http://uas.noaa.gov/policy/.* Further, since NOAA administers the applicable environmental statutes, the FAA defers to NOAA regarding the requirements imposed by specific regulations that protect marine wildlife.

NOAA also expressed concern that the rule would overlap and conflict with several statutes and regulations that prohibit the approach of endangered marine species. NOAA cited the National Marine Sanctuaries Act (NMSA) and the Endangered Species Act (ESA). NOAA asked the FAA to include wildlife-specific language in the rule so that the public is made aware of regulations and guidelines, including the NMFS Marine Wildlife Viewing Guidelines, which recommend, in general, that the public keep a safe distance of 50 yards (150 feet) from dolphins, seals, and sea lions on the water or land and 100 yards (300 feet) from large whales on water or land, and recommends viewing guideline for aerial observations of all marine mammals of 1,000 feet. Green Vegans also cited the same statutes as potentially being implicated by operation of small UAS.

The FAA agrees with NOAA that remote pilots operating a small UAS are responsible for complying with all applicable laws and regulations, not just the requirements of this rule. This rule does not authorize the harassment, harming, or killing of wildlife, and remote pilots of small UAS remain subject to environmental and wildlife laws such as the ones cited by the commenters as well as any other laws applicable to the small UAS operation. With regard to marine wildlife, as discussed earlier, the FAA strongly recommends that remote pilots conducting operations near marine wildlife familiarize themselves with NOAA regulations and guidance, which can be found at: *http://uas.noaa.gov/policy/.* However, with regard to the contents of this rule, the FAA defers to NOAA for the regulations and guidance regarding matters within NOAA's jurisdiction.

Several individual commenters expressed concern that small UAS could be used to deliver hazardous materials to public and private citizens endangering the lives of people, wildlife, and property. In response, the FAA notes that, as discussed in section III.C.1 of this preamble, the provisions of this rule do not authorize the use of small UAS to transport or deliver hazardous materials.

4. Privacy

In the NPRM, the FAA acknowledged that privacy concerns have been raised regarding the integration of UAS into the NAS. Although proposed regulations to address privacy concerns were deemed beyond the scope of this rulemaking, the FAA emphasized its intended participation in the multi-stakeholder engagement process led by the National Telecommunications and Information Administration (NTIA) pursuant to the Presidential Memorandum, Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems (February 15, 2015). Pursuant to the Presidential Memorandum, NTIA and its interagency partners, including the FAA, are working with stakeholders to develop best practices concerning privacy, transparency, and accountability for the broad range of possible UAS platforms and commercial practices.

In addition, the FAA conducted a privacy impact assessment (PIA) of the proposed rule in accordance with section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). As part of the PIA, the FAA analyzed the impact the proposed rule might have on collecting, storing, and disseminating personally identifiable information (PII) of airmen and UAS operators, and the FAA examined and evaluated protections and alternative information handling processes in developing the proposed rule in order to mitigate potential privacy risks. The PIA has been updated to reflect the provisions of this final rule and can be found at: *http://www.transportation.gov/individuals/privacy/privacy-impact-assessments.*

The FAA intends to continue addressing privacy concerns through engagement and collaboration with the public, stakeholders and other agencies with authority and subject matter expertise in privacy law and policy. The FAA considered whether to include privacy provisions in this rulemaking. However, for the reasons explained in the discussion that follows, this rule does not include privacy regulations.

The FAA received about 180 comments on the NPRM raising concerns about the potential impacts of small UAS operations on privacy. Most commenters expressed support for UAS integration and recognized the many benefits of this technology across diverse industries, but commenters discussed concerns regarding personal privacy, data privacy, private property rights and intellectual property rights. Several commenters, including the Illinois Farm Bureau, Colorado Cattlemen's Association, and the International Association of Amusement Parks and Attractions (IAAPA), raised concerns regarding small UAS operations over private property and several asserted that UAS operations should not be permitted over private property without advance authorization given by the business, institution or property owner.

Some commenters, including Colorado Ski Country USA, the National Association of State Departments of Agriculture (NASDA), and the Electronic Privacy Information Center (EPIC), asserted that the FAA should include provisions to protect privacy as part of this rulemaking, while the Center for Democracy and Technology (CDT) asserted the FAA should address privacy in a future rulemaking. The CDT and EPIC included specific regulatory proposals for consideration. The National Farmers Union asked the FAA to be mindful of its concerns regarding the collection of data by industry and government, which might be used against a farm owner.

However, several commenters, including the Colorado Cattlemen's Association, National Farmers Union, and the Florida Department of Agriculture and Consumer Services, recognized that privacy regulations are beyond the scope of this rulemaking and FAA authority. Several commenters, including the Professional Photographers of America and the Law Office of Debbie Weecks, asserted that existing law already addresses the issue of privacy. The News Media Coalition asserted that privacy concerns are best addressed at the State level. The University of North Georgia commented that privacy concerns are minimal provided flights are operated in accordance with FAA rules, and images are acquired from 300 feet or above and are not obtained using facial recognition technology.

The Colorado Cattlemen's Association encouraged the FAA to continue its participation in NTIA's multi-stakeholder engagement efforts consistent with the February 15, 2015 Presidential Memorandum. On the other hand, AeroMarine recommended a federally commissioned review of the technological neutrality of FAA UAS proposed rules led by the Department of Commerce. Aeromarine also recommended a federally commissioned review of the adequacy of comparative technology-neutral privacy regulations (like the EU), led by the Department of Justice. One individual commented on the PIA and asserted it did not raise any strong concerns for the privacy of pilots.

Overall, the comments demonstrate a lack of consensus regarding the extent to which UAS integration poses potential risks for privacy intrusions, how privacy concerns should be addressed, and the FAA's role in efforts to address these concerns. In response, the FAA notes that its mission is to provide the safest, most efficient aerospace system in the world, and does not include regulating privacy. The FAA recognizes that unique characteristics and capabilities of UAS may pose risks to individual privacy. However, these concerns are generally related to technology and equipment, which may be installed on an unmanned (or manned) aircraft, but are unrelated to the safe flight of the aircraft. There is a long history of pilots placing cameras and other sensors on aircraft for a variety of purposes (*e.g.,* news helicopters, aerial surveys, film/television production, law enforcement, etc.).

Although the FAA regulates the safe and efficient operation of all aircraft within the NAS, the FAA has never extended its administrative reach to regulate the use of cameras and other sensors extraneous to the airworthiness or safe operation of the aircraft in order to protect individual privacy. Moreover, there is substantial, ongoing debate among policymakers, industry, advocacy groups and members of the public regarding the extent to which UAS operations pose novel privacy issues, whether those issues are addressed by existing legal frameworks, and the means by which privacy risks should be further mitigated. Recognizing the importance of addressing privacy concerns in the proper forum, the FAA has partnered with other Federal agencies with the mandate and expertise to identify, develop, and implement appropriate mitigation strategies to address privacy concerns.

Turning to specific concerns raised by the commenters, EPIC asserted that privacy is a necessary component of the Comprehensive Plan for civil UAS required by Public Law 112–95, section 332(a), the FAA is required to establish privacy regulations prior to the integration of UAS into the NAS, and the FAA must therefore reissue the NPRM to fulfill the Congressional mandate. EPIC believes the FAA should propose privacy regulations that include provisions for use and data limitations, transparency, and public accountability. The CDT proposed that the FAA consider a future rulemaking to establish (1) limits on UAS collection and analysis of data; (2) limits on UAS retention of data; (3) standardized methods to disclose data collection practices by non-hobbyist UAS operators and technical capacity to identify those operators; and (4) methods to honor requests to opt-out certain areas entirely or partially from UAS data collection. The NASDA and the South Dakota Department of Agriculture also asserted that privacy issues need to be addressed before UAS are integrated into the airspace.

In section 332(a) of Public Law 112–95, Congress required the Secretary of Transportation to develop, in consultation with representatives of the aviation industry, Federal agencies that employ UAS technology in the NAS, and the UAS industry, a comprehensive plan to safely accelerate the integration of civil UAS into the NAS. The mandate included specific direction regarding the contents of the plan, which addressed the safe and efficient integration of UAS into the airspace, but did not require the consideration of privacy implications.[168] Moreover, in section 332(b) of Public Law 112–95, Congress directed the FAA to issue a final rule on small unmanned aircraft systems that will allow for civil operations of such systems in the NAS. Section 333 of Public Law 112–95 directed the Secretary to determine whether UAS operations posing the least amount of public risk could safely be operated in the NAS and, if so, to establish requirements for the safe operation of these systems in the NAS, prior to completion of the UAS Comprehensive Plan and rulemaking required by section 332.

None of the UAS-related provisions of Public Law 112–95 directed the FAA to consider privacy issues when addressing the integration of small UAS into the airspace, or mandated the inclusion of privacy considerations in the UAS Comprehensive Plan. Reading such a mandate into Public Law 112–95 would be a significant expansion beyond the FAA's long-standing statutory authority as a safety agency. Nonetheless, the FAA has consistently recognized the importance of stakeholder engagement regarding the concerns raised regarding privacy implications associated with UAS integration and incorporated privacy considerations into the UAS Test Site Program, under its contracting authority, as discussed further in response to the following comment.

Moreover, consistent with the February 15, 2015 Presidential Memorandum, the FAA has been working closely with the privacy experts at NTIA by participating in public engagement sessions and educating both its governmental partners and privacy stakeholders regarding the safety issues associated with integrating UAS into the NAS. In March 2015, the NTIA invited comment on the issues that should be addressed as part of the stakeholder engagement process, and in July 2015, the NTIA announced further plans to hold a series of public engagement sessions in an open and transparent forum to develop consensus best practices for utilization by civil UAS operators.[169] The FAA will continue to participate in these public engagement sessions and any resulting working group to lend its insight and expertise regarding aviation safety issues as relevant to the development of consensus best practices for civil use of UAS.

EPIC asserted that the FAA has acknowledged that privacy needs to be addressed as part of UAS integration by addressing privacy as part of its test site program.

Section 332(c) of Public Law 112–95 directed the FAA, in coordination with NASA and DOD, to develop a UAS test site program for purposes of gathering safety and technical information relevant to the safe and efficient integration of UAS into the NAS. The UAS test site program is expected to help the FAA gain a better understanding of operational issues, such as training requirements, operational specifications, and technology considerations, which are essential to the FAA's chief mission to ensuring the safety and efficiency of the entire aviation system. Although not a required component of the test site program, the FAA recognized the test site program as an opportunity to further the dialogue with regard to privacy concerns raised concerning UAS integration.

The FAA implemented privacy requirements for the UAS test sites pursuant to its broad authority in 49 U.S.C. 106(l)(6), which allows the Administrator to enter into contracts under "such terms and conditions as the Administrator may consider appropriate." Under this broad contracting authority, the FAA included certain terms and conditions for operating the test sites in the "other transaction agreement" (OTA) for each chosen test site operator, which included requirements that each test site operator establish, and make publicly available, a privacy policy governing all activities and that test sites must be operated in accordance with all applicable privacy laws.[170] The FAA did not specify the contents of any test site operator's privacy policy and noted its expectation that the public entities operating the test sites and their respective State and local oversight bodies would monitor and enforce a test site's compliance with its own policies.[171]

To develop these privacy requirements, the FAA engaged the public and enlisted assistance from subject matter experts outside the agency specializing in privacy law and policy. While the test sites were established in fulfillment of the requirements in Public Law 112–95, the privacy requirements were ultimately included in the OTAs pursuant to the FAA's contracting authority in order to further the dialogue regarding which privacy issues are raised by UAS operations and how law, public policy, and industry practices should respond to those issues in the long run. The FAA consistently emphasized that the privacy requirements for the UAS test sites "are not intended to predetermine the long-term policy and regulatory framework under which UAS would operate."[172]

Contrary to the FAA's general contracting authority in § 106(l)(6), the FAA's rulemaking authority is specifically tied to its critical safety mission. While the FAA must comply with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable legal requirements related to privacy when the FAA is collecting, maintaining, and using information about individuals, the FAA's rulemaking authority neither mandates nor permits the FAA to issue or enforce regulations specifically aimed at protecting privacy interests between third parties. Specifically, this rulemaking is being conducted under 49 U.S.C. 40103(b), 44701(a)(5), and Public Law 112–95, section 333, which focus on the safe operation of aircraft in the NAS. Thus, the functions of the Administrator and the FAA in this rulemaking do not include the protection of privacy interests between third parties. However, as discussed earlier, the FAA recognizes the importance of addressing privacy concerns and will continue to participate in the NTIA process to lend its insight and expertise regarding aviation safety issues to the development of consensus best practices for civil use of UAS.

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[168] *See id.* at section 332(a)(2).

[169] 80 FR 11978, Mar. 5, 2015; 80 FR 41013, July 14, 2015.

[170] *See* 78 FR 68360, 68364, Nov. 14, 2013.

[171] *Id.* at 68363.

[172] *See* Civil UAS Roadmap at 1.4.4; 78 FR 18932, Mar. 28, 2013; 78 FR 12259, Feb. 22, 2013; and 78 FR 68360, Nov. 14, 2013.

EPIC asserted that UAS cannot be safely integrated into the NAS without privacy regulations and if the FAA does not address privacy it will create safety risks, because individuals will turn to self-help measures (*e.g.* by using technology such as geo-fencing, which could lead to the loss of positive control of a UAS) to protect their privacy. In response, the FAA notes that there could be many different motivations (not just privacy concerns) for an individual to engage in unsafe conduct. That is why the regulations of this rule require that a small UAS be safely operated. If a person engages in conduct that creates an unsafe small UAS operation, then that person will be in violation of this rule regardless of the specific motivation for that conduct.

The FAA also notes that, with regard to EPIC's example of geo-fencing as potentially dangerous self-help, a number of commenters on this rule specifically requested the FAA to mandate geo-fencing, asserting that this would increase the safety of a small UAS operation. As discussed in section III.E.3.b.vii.1 of this preamble, while this rule will not require geo-fencing equipage, the FAA may consider such equipage as a positive safety mitigation in evaluating waiver requests for individual operations.

Several commenters, including the Illinois Farm Bureau, Colorado Cattlemen's Association, and the IAAPA, raised concerns regarding small UAS operations over private property and asserted that UAS operations should not be permitted over private property without advance authorization given by the business or property owner. In addition, the IAAPA asserted that UAS could pose a threat to intellectual property and other business interests of amusement parks, and other commenters raised concerns regarding the use of UAS to collect proprietary data over privately owned farms and businesses. However, the Wisconsin Society of Land Surveyors commented that aerial geospatial data acquisition practices using UAS provide significant societal benefit, are not a threat to individual citizen privacy and therefore Federal efforts to impose limits on UAS should exempt surveying and aerial mapping.

As indicated in the NPRM and by some commenters, State law and other legal protections may already provide recourse for a person whose individual privacy, data privacy, private property rights, or intellectual property rights may be impacted by a remote pilot's civil or public use of a UAS. Moreover, as the New Jersey Institute of Technology, pointed out, established Fourth Amendment legal precedent may already "serve as guiding boundaries or thresholds" for law enforcement use of UAS. However, in light of the FAA's long-standing mission and authority as a safety agency, it would be overreaching for the FAA to enact regulations concerning privacy rights.[173]

5. First Amendment

The FAA also received comments concerning the First Amendment implications of this rulemaking. In the NPRM, the FAA proposed a number of restrictions on small UAS flight in the interest of aviation safety, which some commenters have asserted incidentally burden the First Amendment. Many commenters, including the International Center for Law and Economics and TechFreedom, the Student Press Law Center, and the News Media Coalition, encouraged the FAA to consider how the proposed rules may infringe on First Amendment rights.

After describing the applicable standards of review, the International Center for Law and Economics and TechFreedom asserted that various aspects of the rule are likely unconstitutional because they are not sufficiently narrowly drawn and adequately tailored to respond to the government interest for which they were created to address. This commenter went on to argue that the following NPRM provisions would have particular difficulty meeting the First Amendment burdens for time, place, and manner restrictions: (1) Ban on UAS flights over populated areas; (2) the specific airspace restrictions proposed in the NPRM; (3) the licensing regime for UAS operators; (4) the prohibition on nighttime operations; (5) the proposed visual line-of-sight requirements; (6) the ban on operating a small UAS from a moving vehicle; and (7) the ban on simultaneous operation of multiple UAS. Another commenter added that self-employed media photographers and videographers should be exempt from paying fees for operating UAS that may apply to larger news organizations, because such fees unduly would infringe upon their First Amendment rights.

The Student Press Law Center asserted that a failure to carve out an appropriate exemption for student journalism, similar to the one provided for "hobbyists," could leave the final rule susceptible to a First Amendment challenge. The commenter argued that denying a journalist access to the skies on the basis of his intent to engage in protected speech unfairly punishes the would-be speaker, and stated that the intent to engage in a protected activity cannot be used as a basis for more burdensome regulation.

Additionally, one individual asserted that citizens engaged in constitutionally protected First Amendment activity could be subject to increased policing as a result of widespread small UAS usage. Another individual was concerned about the distinction between hobbyists and commercial use because, according to this individual, this distinction could result in the demise of model aviation magazines by muzzling hobbyists who are also paid.

a. First Amendment Law in the United States

In the United States, there is a right to freedom of speech, except under certain circumstances where the government is permitted to restrict speech. Whether the speech can constitutionally be restricted depends on the forum in which the speech is made, the content of the speech, or the manner in which it is regulated.[174] Government limitations on speech in a nonpublic forum receive a lower level of scrutiny than restrictions on speech in a public forum.[175]

In the public forum context, non-content-based restrictions on speech, such as the provisions in this rule, are analyzed using an intermediate scrutiny framework. Under intermediate scrutiny, a restriction on speech must advance a "significant," "substantial," or "important," (but not necessarily "compelling") government interest, and the restriction must be narrowly tailored to achieve that interest. The restriction does not have to be the least restrictive means to advance the governmental interest.[176] There are two categories of non-content-based speech restrictions: (1) Incidental restrictions, which are restrictions aimed at conduct other than speech, but which incidentally restrict speech; and (2) time, place, or manner restrictions on speech.[177]

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[173] *Nat'l Ass'n for Advancement of Colored People* v. *Fed. Power Comm'n*, 425 U.S. 662 (1976).

[174] U.S. Congressional Research Service. Freedom of Speech and Press: Exceptions to the First Amendment (7–5700, September 8, 2014) by Kathleen Ann Ruane. *https://www.fas.org/sgp/crs/misc/95-815.pdf* at 9.

[175] *Ctr. for Bio-Ethical Reform, Inc.* v. *City & Cnty. of Honolulu*, 455 F.3d 910, 920 (9th Cir. 2006).

As discussed below, this rule regulates activity in a nonpublic forum: The NAS. However, even if we assume, for the sake of discussion, that the NAS is a public forum, the proper framework in which to view the provisions of this rule is not under the category of time, place, or manner restrictions, but under the category of incidental restrictions on speech. The flight of a small UAS is not speech—it is conduct other than speech which may incidentally restrict speech (*e.g.,* news reporting, commercial speech, or aerial photography). However, for the reasons discussed below, even if this rule were to be analyzed using the more stringent time, place, manner framework, the provisions of this rule would still be consistent with the First Amendment.

b. Restrictions on Speech in a Non-Public Forum

First, the location in which an activity occurs determines the level of scrutiny the courts will apply to a restriction placed on the activity. Restrictions placed on activities that occur in a non-public forum receive the lowest level of First Amendment scrutiny. Airspace is a nonpublic forum. As discussed in *Center for Bio-Ethical Reform, Inc.* v. *City and County of Honolulu,* "one would be hard pressed to find another forum that has had its access as historically restricted as U.S. airspace." [178] Thus, FAA regulation of the NAS may impose restrictions in this forum that are "reasonable and viewpoint neutral." [179] "The reasonableness analysis focuses on whether the limitation is consistent with preserving the property for the purpose to which it is dedicated." [180] This rule is reasonable because it directly addresses the FAA's interest in preserving the safety of manned aircraft flying in the NAS, as well as the safety of people on the ground. This rule is also viewpoint neutral because it does not specifically target a certain opinion or stance.[181] As such, the provisions of this rule are consistent with the First Amendment.

c. Incidental Restrictions on Speech

If we were to assume, for the sake of discussion, that the NAS is a public forum, then the appropriate category in which to evaluate the provisions of this rule would be as an incidental restriction on speech. The activity actually regulated by this rule—flying a small unmanned aircraft—is not speech or an expressive activity. Rather, the flight of a small unmanned aircraft has only an incidental relationship to expressive conduct because it could be used to assist an expressive activity, such as recording something via camera. However, the provisions of this rule regulate only the flight of small unmanned aircraft; the use of a camera or other method of recording something near the aircraft is not directly regulated by part 107. In other words, attaching a camera to a small unmanned aircraft does not transform flying that aircraft into expressive conduct any more than attaching a camera to a car would transform driving that car into expressive conduct. In both cases, any restrictions on expressive conduct that occur as a result of regulating the operation of the small unmanned aircraft or car are incidental restrictions.

The Supreme Court has noted that the standard for determining the constitutionality of an incidental restriction is "little, if any, different from the standard applied to a time, place, or manner restriction." [182] As long as the regulation is content-neutral and narrowly focused on a substantial government interest, an incidental restriction need not be the least restrictive or least intrusive means of furthering that government interest.[183] As discussed in the previous section, this regulation is content-neutral and is narrowly focused on the substantial government interest of regulating aviation safety.[184] Therefore, it need not be the least restrictive or least intrusive means of furthering aviation safety.

In *Arcara* v. *Cloud Books,* the defendant challenged a New York State law under which an adult bookstore was closed because it was found to be a public health nuisance. Respondents argued that the effect of the statutory closure remedy impermissibly burdened its bookselling activities protected under the First Amendment. The Supreme Court observed that "[t]he severity of this burden is dubious at best, and is mitigated by the fact that respondents remain free to sell the same materials at another location." [185] The Court continued:

> In any event, this argument proves too much, since every civil and criminal remedy imposes some conceivable burden on First Amendment protected activities. One liable for a civil damages award has less money to spend on paid political announcements or to contribute to political causes, yet no one would suggest that such liability gives rise to a valid First Amendment claim. Similarly, a thief who is sent to prison might complain that his First Amendment right to speak in public places has been infringed because of the confinement, but we have explicitly rejected a prisoner's claim to a prison environment least restrictive of his desire to speak to outsiders.[186]

Ultimately, the Court concluded that absent any basis for heightened scrutiny, "the First Amendment is not implicated by the enforcement of a public health regulation of general application against the physical premises in which respondents happen to sell books." [187]

Similarly, this rule is directed at aviation safety and does not directly regulate reporting or other expressive activity. Anyone seeking to use a small UAS for photography or videography in a manner not permitted under this rule is free to utilize another method of photography or videography by, for example, using a manned aircraft, filming from a tall structure or landmark, filming from the ground, or using specialized equipment. Thus, the provisions of this rule meet the constitutional standard for an incidental restriction on speech, and enforcement would not implicate the First Amendment.

d. Time, Place, Manner Restrictions on Speech

Finally, even if we were to assume that this rule directly regulates expressive activity in a public forum, the provisions of this rule would still be consistent with the First Amendment as a permissible time, place, or manner restriction on speech. A constitutionally permitted time, place, or manner restriction on speech occurs when the regulation is content-neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels of communication.

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[176] CRS at 9.

[177] CRS at 9.

[178] *Ctr. for Bio-Ethical Reform, Inc.* v. *City & Cnty. of Honolulu,* 455 F.3d 910, 920 (9th Cir. 2006).

[179] *Ctr. for Bio-Ethical Reform* at 915.

[180] *Ctr. for Bio-Ethical Reform* at 922, citing *Brown* v. *California Dept. of Transp.*321 F.3d 1217, 1222 (9th Cir. 2003).

[181] *Ctr. for Bio-Ethical Reform* at 921.

[182] *Clark,* 468 U.S. at 294.

[183] *S.F. Arts & Athletics, Inc.* v. *U.S. Olympic Comm.,* 483 U.S. 522, 537 (1987).

[184] *See Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue,* 460 U.S. 575 (1983). In that case, the Supreme Court struck down a tax imposed on the sale of large quantities of newsprint and ink because the tax had the effect of singling out newspapers to shoulder its burden. Here there is no such disproportionate effect—there are many small UAS operators who are not newsgathering organizations.

[185] *Arcara* v. *Cloud Books, Inc.,* 478 U.S. 697, 705 (1986).

[186] *Id.* at 705–06.

[187] *Id.* at 707.

First, the requirement that the regulation be content-neutral is satisfied in this rule. The rule applies equally to all remote pilots of small UAS subject to FAA regulation, regardless of content.[188] The regulation "is not being applied because of disagreement with the message presented."[189] There is no question as to the content-neutrality of the regulation in this rule.

Second, this rule is narrowly focused on the FAA's substantial interest in protecting the navigable airspace of the United States, in addition to people on the ground. An example of a restriction that was considered unconstitutional was a ban on displaying flags or banners on public sidewalks surrounding the Supreme Court because there was not sufficient justification for the ban and it was not narrowly tailored.[190] Conversely, with respect to the regulation at issue, to discard the provisions with which the commenters have taken issue would be at odds with the FAA's stated mission of providing the safest airspace system in the world. The safety rationale for the provisions specifically designated by commenters as posing First Amendment issues is discussed in those provisions' respective sections of this preamble.

Lastly, there are adequate alternative channels of communication available for operations that are not allowed under the provisions of this rule. The First Amendment analysis does not require that a regulation be the least restrictive means of achieving the government interest, only that there not be a less restrictive alternative that serves the government's interest as efficiently as the regulation at issue. A variety of other reporting, photography, and videography tactics that have been used prior to the existence of small UAS continue to be available to this day—the provisions of this rule apply only to small UAS, and not to other methods of conducting photography or videography. For example, as mentioned previously, the capability to conduct aerial photography and videography using manned aircraft remains unaffected by this rule.

This rule fulfills several legitimate needs, the most important of which is providing the safest, most efficient aerospace system in the world. The provisions at issue all align with that principle. As such, this rule (which does not discriminate based on the time, place or manner of any expressive conduct) is narrowly tailored to achieve a significant, substantial, and important government interest.

6. Preemption

Although the NPRM did not mention preemption, the FAA received some comments on Federal preemption over State and local regulations. The FAA has reviewed the comments and, as discussed below, decided that specific regulatory text addressing preemption is not required in the final rule.

The Associated General Contractors of America, Consumers Energy Company, and National Association of Mutual Insurance Companies raised concerns about the proposed rule's lack of a preemption provision. Consumer Energy Company pointed out that without a preemption provision, State and local governments may attempt to regulate small UAS operations, resulting in potentially conflicting rules. Commenters argued that conflicting rules may lead to confusion, litigation costs, increased operational limitations, burden on UAS users, and delay in the adoption of UAS technology.

Additionally, the Stadium Managers Association commented that states and local jurisdictions may react to the lack of Federal regulations for model aircraft "with a flood of legislation that might very well be more restrictive and controlling than that of the § 336 community-based organizations."[191] The Stadium Managers Association questioned how Federal preemption would apply to model aircraft and stated generally its concern about the potential conflict between State and Federal laws.

The FAA is not persuaded that including a preemption provision in the final rule is warranted at this time. Preemption issues involving small UAS necessitate a case-specific analysis that is not appropriate in a rule of general applicability. Additionally, certain legal aspects concerning small UAS use may be best addressed at the State or local level. For example, State law and other legal protections for individual privacy may provide recourse for a person whose privacy may be affected through another person's use of a UAS.[192]

On December 17, 2015, the FAA Chief Counsel and the Director of the FAA's UAS Integration Office issued a Fact Sheet on State and Local Regulation of Unmanned Aircraft Systems (UAS). The Fact Sheet is intended to serve as a guide for State and local governments as they respond to the increased use of UAS in the national airspace. It summarizes well-established legal principles as to the Federal responsibility for regulating the operation or flight of aircraft, which includes, as a matter of law, UAS. The Fact Sheet also summarizes the Federal responsibility for ensuring the safety of flight as well as the safety of people and property on the ground as a result of the operation of aircraft. Substantial air safety issues are implicated when State or local governments attempt to regulate the operation of aircraft in the national airspace. The Fact Sheet provides examples of State and local laws affecting UAS for which consultation with the FAA is recommended and those that are likely to fall within State and local government authority. For example, consultation with FAA is recommended when State or local governments enact operational UAS restrictions on flight altitude, flight paths; operational bans; or any regulation of the navigable airspace. The Fact Sheet also notes that laws traditionally related to State and local police power—including land use, zoning, privacy, trespass, and law enforcement operations—generally are not subject to Federal regulation. Finally, the Fact Sheet includes a list of relevant legal authorities in an appendix. The Fact Sheet is available at *http://www.faa.gov/uas/regulations_policies/media/UAS_Fact_Sheet_Final.pdf*.

7. Agricultural Operations

Several commenters stated that any aerial application work conducted with small UAS must comply with 14 CFR part 137, "Agricultural Aircraft Operations." The FAA agrees, and emphasizes that under the current regulations (which remain unchanged by this rule) a remote pilot must comply with part 137 if he or she is engaging in dispensing activities that meet the definition of "agricultural aircraft operation" in 14 CFR 137.3.

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[188] Any disparities in operation between pilots of small UAS who are hobbyists and those who are using small UAS for commercial purposes are beyond the control of the FAA—the "carve-out" for hobbyists was not instituted with FAA authority. As stated in the rule, section 336 of Public Law 112–95 specifically prohibits the FAA from promulgating rules regarding model aircraft that meet all of the following statutory criteria:

- The aircraft is flown strictly for hobby or recreational use;
- The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;
- The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and
- When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

Therefore, the FAA can only promulgate rules regarding commercial uses of small UAS that are outside the scope of section 336, such as commercial uses.

[189] *Clark,* 468 U.S. at 294.

[190] *United States* v. *Grace,* 461 U.S. 171 (1983).

[191] Stadium Managers Association Comment at 5.

[192] NPRM at 9552.

Part 137 applies to "agricultural aircraft operations" conducted within the United States. Section 137.3 defines "agricultural aircraft operation" as "the operation of an aircraft for the purpose of (1) dispensing any economic poison, (2) dispensing any other substance intended for plant nourishment, soil treatment, propagation of plant life, or pest control, or (3) engaging in dispensing activities directly affecting agriculture, horticulture, or forest preservation, but not including the dispensing of live insects."

Any small UAS remote pilot conducting operations under part 107 that constitute an "agricultural aircraft operation" within the meaning of part 137 is required to comply with part 137, in addition to part 107, and hold an agricultural aircraft operator certificate. A remote pilot of a small UAS conducting agricultural aircraft operations may pose a contamination danger to himself or people in the area of operation, either through the exposure to or ingestion of the dispensed substance, or through the contamination of water or food supplies. Part 137 addresses this safety concern by levying requirements on agricultural aircraft operations, including certification, knowledge, and skill requirements. Therefore, any small UAS operation that meets the applicability requirements of part 137 must comply with part 137 in addition to part 107; these regulations are independent requirements. The FAA recognizes that remote pilots may not be able to meet all of the part 137 requirements because these regulations did not contemplate the unique characteristics of unmanned aircraft. As with other regulatory provisions, those remote pilots may seek an exemption from the part 137 requirements they are unable to meet.

The FAA notes that not all operations related to agricultural uses of a small UAS will be subject to part 137. Small UAS operations that are related to agriculture (*i.e.,* crop monitoring, crop photography) but do not constitute an "agricultural aircraft operation" under part 137 are not required to comply with part 137.

8. Miscellaneous Comments

Several individual commenters urged the FAA to focus on education. A few commenters, for example, recommended the FAA require that all UAS sold in the United States include information about applicable UAS regulations. Another commenter recommended a televised or magazine ad campaign "to educate and steer people."

The FAA will conduct an outreach effort, including publishing an advisory circular providing guidance on safe small UAS operations, and will continue to develop guidance for the public at *http://www.faa.gov/uas/.*

The North Dakota Department of Agriculture raised concerns related to data gathering, storing and ownership of UAS technology and the fact that UAS operations can take place across State borders.

These issues are beyond the scope of this rulemaking.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $155 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs; (2) is an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant positive economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) is subject to the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). These analyses are summarized below.

Assumptions and Data

The FAA's estimated benefits and costs are based on assessments of the small UAS Aviation Rulemaking Committee (ARC), commenters to the NPRM, and the opinions of FAA and industry subject matter experts. We remind the reader that since legal operation of non-recreational/non-hobby small UAS in the NAS constitutes a new market, available data for these operations is sparse. The benefit and cost analysis for the regulatory evaluation is based on the following assumptions:

- Because the commercial small UAS industry is not yet established and may evolve differently from current expectations, the FAA determines that a five-year time frame of analysis is appropriate.
- The base year is 2016.
- We use a three percent and seven percent discount rate for the costs, as prescribed by OMB in Circular A–4.[193]
- Costs of the rule are estimated using two separate fleet forecasts. Based on these forecasts, a low case and a high case are developed.
  - ○ *Low Case:* For this scenario, the small UAS fleet is separated into two different categories, professional-grade and consumer-grade, as discussed in the low case fleet forecast below. The FAA assumes professional vehicles are replaced every three years and the consumer vehicles are replaced every 1.5 years.[194]
    - ▪ Small UAS remote pilots flying "Professional" vehicles are assumed to remain part of the pilot stock for the five-year analysis period. Pilots flying "Consumer" vehicles are assumed to attrite at a rate of 20 percent annually.[195]

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[193] *http://www.whitehouse.gov/omb/circulars_a004_a-4.*

[194] Commercial sUAS Market Forecast, Prepared for GRA Incorporated by Teal Group Corporation. December 31, 2015.

[195] We note that the Small Business Administration (SBA) reports new firms with employees tend to have an annual failure rate of 10 to 12 percent where new firms without employees have failure rates about 30 to 36 percent. As this is an entirely new industry, the failure rate may be towards the higher end of the range. We find that the FAA's forecast of 20 percent is consistent with the SBA's failure rate of new business. *http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf.*

    - ○ *High Case:* The high case does not distinguish between small UAS types and it is assumed that all vehicles have a life-span of one year.
        - ■ All pilots are assumed to attrite at a rate of 20 percent annually.[196]
- We estimate that there is one qualified FAA-approved remote pilot in command for every two small UAS registered[197] and that both small UAS are of the same type (*i.e.* professional or consumer). This is a simplifying assumption.
- The FAA estimates that a small UAS remote pilot applicant will expend 20 hours of self-study in preparation for taking the initial knowledge test and ten hours for the recurrent test.[198] For individuals that fail the initial or recurrent test on their first attempt, the self-study-time to retake the test is reduced by 50 percent.
- The FAA assumes that it will take an applicant 3 hours to take the initial or recurrent knowledge test. This time may be over-estimated for the purpose of the recurrent knowledge test, given that it covers fewer topics than other pilot tests.
- The FAA determines that holders of Public COAs for activities may choose to operate under part 107.
- The FAA assumes that the failure rate of applicants[199] taking the small UAS initial and recurrent knowledge based test is 10% percent.[200] However, applicants that fail are assumed to pass the knowledge test on their second attempt.
- The cost to administer an FAA approved small UAS knowledge test to a small UAS applicant or operator is $150.[201]
- The FAA estimates that a small UAS operator applicant will need to travel an average of 19 miles one way to reach their closest KTC location (38 miles round trip).[202]
- The FAA estimates that pilots operating small UAS under a 333 exemption will need to travel an average of 19 miles one way to reach their sport pilot license (38 miles round trip).[203]
- The 2016 published IRS variable cost mileage rate of $0.19 per mile is used to estimate the cost of vehicle usage.[204]
- The FAA assigns the hourly value of time and hourly values of travel time savings as to equal $25.14 for Year 1.[205]
- The FAA cost to issue an airman certificate is $25.
- The FAA assumes a $50 fee to validate the identity of a remote pilot applicant who holds a part 61 pilot certificate with a current flight review and who has opted to take the online training course instead of the initial knowledge test.[206]
- The FAA assumes that those remote pilots flying small UAS under a 333 exemption will operate under Part 107 rules upon expiration of their exemption.
- The FAA determines that the cost to for an applicant to be granted a 333 exemption is $1,500.[207]
- The FAA estimates that the cost for sport pilot school is $3,000.[208]
- The FAA estimates that the flight training time for a sport pilot certificate is 33 hours.[209]
- The FAA estimates that a sport pilot applicant will spend 20 hours of self-study in preparation for taking the sport-pilot initial knowledge test.[210]
- The FAA estimates that an applicant for a sport pilot license will make 22 round trips to the training center.[211]

Benefits Summary

The net benefit of a regulatory action can be expressed by the change in economic welfare that it generates for society. These welfare impacts are reflected by changes in "consumer surplus."[212] Consumer surplus is an economic concept reflecting the idea that individuals and businesses demonstrate a willingness to pay for various goods and services, which reflects the value they receive from consuming or using those goods and services. Of course, not all consumers and business will receive the same value from a good or service, and this is reflected in the fact that there is usually wide variation in their willingness to pay to acquire it. The demand curve for that good or service reflects the continuum of values that different businesses and consumers receive from using it, and the consequent variation in their willingness to pay to purchase it.

Businesses and consumers to whom this value exceeds the price of purchasing a good or service will do so, and as a result will experience benefits equal to the difference between the value they receive from that good or service and the price they pay to purchase it. This difference represents the consumer surplus they experiencing from purchasing and using it.

A government action that reduces the price of a good or service increases the difference between the value its original buyers attach to it and the price they pay for it, thereby increasing the consumer surplus they receive. At the same time, the reduction in its price leads some consumers or businesses that were previously unwilling to purchase it—because its value to them was below its price—will now find it worthwhile to do so. Like those who purchased it at its initially higher price, they now also experience consumer surplus equal to the difference between the value they receive from having it and the (lower) price they now pay to purchase it.

The benefit resulting from such an action includes the increases in consumer surplus to both groups: The savings experienced by those who formerly purchased the affected good or service at its initially higher price, and the new or additional consumer surplus experienced by those who decide to purchase it at its now lower price. Again, because the demand curve for that good or service reflects the distribution of values that businesses and consumers receive from using it, this total benefit can be quantified by estimating the area under the demand curve between the old price and the new price.

This Part 107 small UAS rule is an "enabling rule," which effectively reduces the cost of entry into the non-recreational, non-hobby (or "commercial") market for UAS services. Benefits are quantified in terms of changes in consumer surplus for both existing 333 exemption holders, who have incurred significant costs to enable them to operate small UASs (and would continue to do so in the absence of this rule), and new small UAS pilots certified under the streamlined procedures it establishes. The consumer surplus for new pilots is measured by the traditional consumer surplus triangle while the consumer surplus for the 333 exemption holders is measured as a cost savings. For new pilots, initial costs to obtain the remote pilot certificate were subtracted from consumer surplus to obtain an estimate of net benefits to pilots. For existing 333 exemption holders, the costs of maintaining their remote pilot certificates and other costs, such as TSA vetting, were subtracted from the consumer surplus to obtain estimates of the net benefits to pilots.

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[196] Small UAS Registration and Marking interim final rule (Registry IFR), published on December 16, 2015.

[197] Based on the FAA Civil Aircraft Registry as of December 2015.

[198] The FAA does not require a small UAS remote pilot applicant to attend ground school to be eligible to take the initial knowledge test. However, the FAA acknowledges that applicants may need self-study to pass the exam.

[199] The FAA notes that a person first must apply to become a small UAS remote pilot. During the application process, this analysis will refer to a person applying to become a small UAS remote pilot as an applicant. After the applicant has successfully passed the application process, this analysis will refer to the person as a small UAS remote pilot.

[200] Since the small UAS knowledge test has yet to be administered, statistics are not yet available to estimate the failure rate of applicants. However, the weighted average failure rate for all categories of airman taking knowledge tests in 2014 was 10%.

[201] *http://www.catstest.com/airman-testing-exams/recreational-private-pilot.php.*

[202] See "Travel Expense" section of the regulatory evaluation for methodology and source information.

[203] See "Travel Expense" section of the regulatory evaluation for methodology and source information.

[204] *https://www.irs.gov/uac/Newsroom/2016-Standard-Mileage-Rates-for-Business-Medical-and-Moving-Announced.*

[205] Source: Economic Values for Evaluation of FAA Investment and Regulatory Decisions (*http://www.faa.gov/regulations_policies/policy_guidance/benefit_cost/*) Table 1–1 Recommended Hourly Values of Travel Time Savings. P. 1–2. Increased by 1.1 percent annually per U.S. Department of Transportation Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis. (*https://www.transportation.gov/administrations/office-policy/2015-value-travel-time-guidance.* p.6).

[206] The FAA considers this to be a conservative estimate since there are no overhead costs associated with positive identification. Since the FAA did not receive a comment providing a better basis for this estimate, the FAA will continue to use $50 as the positive identification fee for the final rule.

[207] *http://antonelli-law.com/Drone_UAS_Practice_Group.php* (Checked on 3/16/2016).

[208] *http://www.aopa.org/letsgoflying/ready/time/options.html.*

[209] Ibid.

[210] To determine the amount of self-study an individual would need to prep for the knowledge test, we examined two different sport pilot ground schools that claimed attendance at one of their sessions over the course of a weekend would be adequate preparation to pass the sport pilot written knowledge test. We then used these hours as a proxy for the self-study time a remote pilot applicant would need to pass the initial knowledge test. One of the pilot schools we examined offered a two-day sport pilot course which included 19 hours of instruction, and the other school offered a three-day course that lasted for a period of 23 hours. Based upon these two estimates, the FAA assumes that 20 hours of self-study is adequate to pass the initial knowledge test.

[211] Federal Aviation Administration—Flight Standards Service

[212] The impact of regulatory actions on economic welfare also includes any resulting changes in "producer surplus." In this case, however, a government agency (FAA) is the "producer" of UAS pilot certifications, and its marginal or incremental costs for certifying additional pilots are assumed to be constant. Because the agency thus receives no producer surplus, the welfare impacts of this regulatory action consist entirely of changes in consumer surplus to the two categories of small UAS pilots.

PART 107 FINAL RULE QUANTIFIED BENEFITS TO PILOTS—LOW CASE

[$ Millions]

Year	Cost savings 333 pilots	Consumer surplus remote pilots	Total consumer surplus
2016		$33.7	$33.7
2017	$1.5	104.2	105.8
2018	2.6	159.8	162.6
2019	1.1	275.6	276.7
2020	1.8	371.4	373.3
Total	*7.2*	*944.9*	*952.0*
Discounted 3%			*874.4*
Discounted 7%			*785.1*

PART 107 FINAL RULE QUANTIFIED BENEFITS TO PILOTS—HIGH CASE

[$ Millions]

Year	Cost savings 333 pilots	Consumer surplus remote pilots	Total consumer surplus
2016		$1,700	$1,700.0
2017	$1.5	5,226	5,227.5
2018	2.6	521	523.6
2019	1.1	1,507	1,508.1
2020	1.8	1,352	1,353.8
Total	*7.2*	10,306	*10,313.2*
Discounted 3%			*9,852*
Discounted 7%			*9,307*

Note: The benefits for existing 333 exemption holders are the same under both the high and low fleet forecasts.

Cost Summary

In addition to those costs subtracted from consumer surplus to calculate benefits, there are other costs which include renewal costs for new pilots, small UAS lighting costs, change of name costs, and government costs. In the Regulatory Evaluation, we estimate these costs by provision. In the following tables, we provide the estimated total cost for both the low case and high case of the final rule for the five year period of analysis.

SMALL UAS PART 107 FINAL RULE COSTS—LOW CASE

[Millions of dollars]

	2016	2017	2018	2019	2020	2016–20
Owner/Operator Costs						
Costs Netted Out of Consumer Surplus						
Initial "New" Pilot Costs	$9.83	$30.52	$47.10	$81.66	$110.76	$279.87
333 Pilot Costs		0.1	0.24	0.04	0.07	0.49
Total	9.83	30.66	47.34	81.70	110.83	280.36
Other Costs						
Pt 107 "New" Pilots—Recurrent Tests			4.37	13.84	24.52	42.73
Change of Name or Address Form	0.02	0.05	0.09	0.17	0.27	0.59
Anti-Collision Lighting	1.05	2.72	4.80	8.54	12.50	29.61
Total	1.07	2.77	9.27	22.55	37.28	72.93
Total Owner/Operator Costs	10.90	33.43	56.61	104.25	148.11	353.29
Government Costs						
TSA Security Vetting	0.12	0.39	0.59	0.99	1.32	3.41

SMALL UAS PART 107 FINAL RULE COSTS—LOW CASE—Continued

[Millions of dollars]

	2016	2017	2018	2019	2020	2016–20
FAA—Develop Knowledge Tests	0.25					0.25
FAA—Develop Part 61 Training	0.12					0.12
FAA—sUAS Operating Certificate	0.30	0.96	1.48	2.46	3.31	8.52
FAA—Develop ATC Training	0.03					0.03
FAA—Train ATC Employees	0.93					0.93
FAA—Develop Flight Standards Training	0.03					0.03
FAA—Train Flight Standards Employees	0.13					0.13
FAA—Hiring Additional Employees	13.07	18.33	24.69	33.02	43.81	132.93
Total Government Costs	14.98	19.68	26.76	36.47	48.45	146.34
Total Gov't and Owner/Operator Costs	25.87	53.11	83.37	140.72	196.56	499.63
7% Present Value	25.87	49.64	72.82	114.87	149.96	413.15
3% Present Value	25.87	51.57	78.59	128.77	174.65	459.44

Note: Initial "New" Pilot Costs and 333 Pilot Costs were already subtracted to compute the estimates of the benefits to pilots presented above and should not be included when calculating total net benefits.

SMALL UAS PART 107 FINAL RULE COSTS—HIGH CASE

[Millions of dollars]

Owner/Operator costs	2016	2017	2018	2019	2020	2016–20
Costs Netted Out of Consumer Surplus						
Initial "New" Pilot Costs	$248.00	$765.00	$77.00	$223.00	$202.00	$1,515.00
333 Pilot Costs		0.14	0.24	0.04	0.07	0.49
Total	248.00	765.14	77.24	223.04	202.07	1,515.49
Other Costs						
Pt 107 "New" Pilots—Recurrent Tests			$135.28	$417.90	$129.61	$682.79
Change of Name or Address Form	0.29	1.19	1.23	1.27	1.32	5.30
Anti-Collision Lighting	19.74	79.74	81.76	83.84	85.95	351.04
Total	20.03	80.93	218.27	503.01	216.88	1,039.13
Total Owner/Operator Costs	268.03	846.07	295.51	726.05	418.95	2,554.62
Government Costs						
TSA Security Vetting	$3.09	$9.38	$0.93	$2.69	$2.41	$18.50
FAA—Develop Knowledge Tests	0.25					0.25
FAA—Develop Part 61 Training	0.12					0.12
FAA—sUAS Operating Certificate	7.71	23.44	2.33	6.73	6.03	46.24
FAA—Develop ATC Training	0.03					0.03
FAA—Train ATC Employees	0.93					0.93
FAA—Develop Flight Standards Training	0.03					0.03
FAA—Train Flight Standards Employees	0.13					0.13
FAA—Hiring Additional Employees	22.40	35.21	34.76	35.95	45.97	174.29
Total Government Costs	$34.69	$68.02	$38.02	$45.38	$54.41	$240.52
Total Gov't and Owner/Operator Costs	$302.72	$914.09	$333.53	$771.43	$473.36	$2,795.14
7% Present Value	302.72	854.29	291.31	629.72	361.13	2,439.17
3% Present Value	302.72	887.49	314.38	705.94	420.58	2,631.12

Note: Initial "New" Pilot Costs and 333 Pilot Costs were already subtracted to compute the estimates of the benefits to pilots presented above and should not be included when calculating total net benefits.

Net Benefits Summary

This rulemaking responds to Congressional direction to allow commercial operation of small UAS in the national airspace system (NAS). Currently the FAA has issued over 4,000 exemptions allowing for commercial operations. This rule will lower the costs of entry for small UAS commercial operations. Once issued, future operators will decide whether their benefits exceed their costs. The FAA has quantified these benefits by estimating consumer surplus resulting from future commercial operations.

The final rule's major costs are activities associated with recurrent knowledge test requirements for the airman certification of small UAS remote pilots. Also, there are costs associated with the security vetting that TSA is required to conduct. The FAA incurs costs to issue operator certificates with a small UAS rating; costs for developing knowledge tests and on-line training for remote pilot applicants; and costs for training FAA personnel. Additional costs will also accrue from time it takes to complete the paperwork for airman certification and airman name or address change.

The estimated out-of-pocket cash outlay for a remote pilot applicant to be FAA-certificated is $150. As this rulemaking enables new businesses and a new market, each remote pilot will decide to voluntarily enter the market and incur these compliance costs because they expect their benefits to exceed costs. As profitable opportunities increase, so will the social benefits. The net social benefits of this rulemaking over the 5-year analysis period are presented below.

SMALL UAS PART 107 FINAL RULE NET SOCIAL BENEFITS: 2016–2020

	Millions $	7% PV Millions $	3% PV Millions $
Net Benefits to Pilots: 333 Pilots and Pt 107 Pilots	$952	$785	$874
FAA and Other Costs*	219	182	202
Net Social Benefit	733	603	672
HIGH CASE			
Net Benefits to Pilots: 333 Pilots and Pt 107 Pilots	$10,313	$9,307	$9,852
FAA and Other Costs*	1,280	1,072	1,184
Net Social Benefit	9,034	8,235	8,668

*Other costs include TSA vetting costs, anti-collision lights, and part 107 recurrent costs. Details may not add to column totals due to rounding.

B. Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Public Law 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. Section 604 of the Act requires agencies to prepare a final regulatory flexibility analysis (FRFA) describing the impact of final rules on small entities. When issuing a final rule, section 604(a) of the Act specifies that each FRFA contain:

- A statement of the need for and objectives of the rule;
- a statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
- a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected

1. A Statement of the Need for and Objectives of the Rule

The FAA is amending its regulations to adopt specific rules to allow the operation of small unmanned aircraft system (small UAS) operations in the National Airspace System (NAS). These changes will address the operation of small UAS and the certification of their operators. The requirements will allow small UAS to operate in the NAS while minimizing the risk they may pose to manned aviation operations and the general public.

Currently commercial activity using a small UAS is prohibited by Federal regulation unless the civil aircraft has an airworthiness certificate in effect or operations are approved by the FAA on a case-by-case basis via an exemption from the pertinent regulations. Once this final rule is adopted, operators will be permitted to participate in certain non-hobbyist activities from which they are currently prohibited without a more costly exemption. The final rule requirements are intended to enable the opportunity for the private sector to develop commercial small UAS businesses and facilitate legal and safe operations.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of such Issues, and a Statement of any Changes Made in the Proposed Rule as a Result of Such Comments

One individual commented that the regulatory evaluation did not differentiate the economic impact between large operators of small UAS and small operators of small UAS, and that the regulatory flexibility analysis describing the impact to small operators was not available. The Initial Regulatory Flexibility Determination (IRFD) was included as Section IV.B of the NPRM. In that regulatory flexibility determination, the FAA states that most, if not all, new commercial activities will be conducted by operators that would be small entities. Because the commercial small UAS industry is not yet established and legal operation of commercial small UAS in the NAS constitutes a new market, available data is sparse. Accordingly, the FAA has not quantified the number of small entities to which the final rule will apply because while the FAA believes most would be small entities, some may evolve quickly to become large firms.

One individual commented that the proposed cost for the knowledge test fees, and TSA security vetting and related costs are too high, and that the high cost will be burdensome for small startup businesses and negatively affect new innovative small UAS businesses in the U.S. The commenter stated that the total cost at the beginning should be no more than $1,000. The FAA disagrees that the compliance costs of this rule are too high. As shown in the regulatory evaluation, the only initial out-of-pocket cost for an owner/operator is $150 to take the initial knowledge test. For part 61 pilot certificate holders with a current flight review, the cost is even less and consists of $50 for airman certificate application verification by a DPE, CFI or ACR. This rulemaking only requires that an applicant for a remote pilot certificate with a small UAS rating demonstrate aeronautical knowledge by passing an initial knowledge test, or, for those eligible, completing on-line training.

One individual commented that he had been looking into starting a small business for monitoring pipelines and right of ways for oil and gas companies using UAV's, but that the blanket visual-line-of-sight requirement makes his business plan impossible. The commenter states that the rule essentially protects all current aviation companies from competition, and shuts down many small business startups. The FAA disagrees with this belief. The final rule will integrate small UAS operations posing the least amount of risk to the NAS. The operational limitations are imposed to keep the NAS safe. In the meantime, the FAA will continue working on integrating UAS operations that pose greater amounts of risk and will issue notices of proposed rulemaking for those operations once the pertinent issues have been addressed. Once the entire integration process is complete, the FAA envisions the NAS populated with UAS that operate well beyond the operational limits of this rule. The FAA has selected this approach because it will allow lower-risk small UAS operations to be incorporated into the NAS immediately as opposed to waiting until the issues associated with higher-risk UAS operations are resolved.

The NBAA and an individual commented positively on the NPRM. The NBAA commented that they believe the NPRM could have a positive impact on small entities. An individual commented that he is a small business owner for whom UAS are an integral part of his business plan, and these rules will help him grow his business, while ensuring a safe operating environment for UAS.

3. The Response of the Agency to any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in Response to the Proposed Rule, and a Detailed Statement of any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The SBA Office of Advocacy commented that the FAA should articulate and quantify the framework or parameters for assessing risk, reassess its consideration of alternatives in the proposed rule, and release any safety data it has in order to facilitate the public's evaluation of the FAA's assessment of risk. With regard to data, the supporting documents available in the docket for this rulemaking contain everything that the FAA relied on in issuing this rule. At this time, the FAA does not have data that would allow it to quantify the risk posed by small UAS operations conducted under part 107. The FAA notes, however, that many of the operating restrictions of part 107 are waivable, and the agency anticipates gaining a significant amount of data and operational experience as a result of its administration of the waiver process.

The FAA also emphasizes that this rule is simply one step in the integration of small UAS into the NAS. Both the FAA and the private sector currently have a number of initiatives to obtain more data on small UAS operations, and the FAA anticipates using this data in future agency actions to further integrate UAS operations into the NAS.

In response to the SBA Office of Advocacy comment regarding alternatives, the FAA responds that the initial regulatory evaluation discussed 9 separate alternatives in its regulatory analysis. The alternatives were rejected due to policy considerations and the undue burden that would be imposed on small UAS operators.

4. A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply, or an Explanation of Why No Such Estimate Is Available

Because the commercial small UAS industry is not yet established and legal operation of commercial small UAS in the NAS constitutes a new market, available data for these operations is sparse. However, this industry is ideal for a small entity since start-up costs are lower than many other industries.[213] Based on analysis by AUVSI, over 90 percent of exemption holders are small businesses. If this trend continues over the 5-year analysis period, the FAA forecasts a 90 percent of the vehicle owners in both the low case and the high case will be small entities.[214] The FAA believes that the final rule will enable numerous new industries, while maintaining a safe operating environment in the NAS.

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This rule has two reporting requirements for small UAS remote pilots: Accident reporting and, upon request of the Administrator, reporting of deviations from the rules of Part 107 during an emergency. The remote pilot in command is required to report any accident that results in at least serious injury to any person or any loss of consciousness; or damage to any property, other than the small unmanned aircraft. The remote pilot in command is also required to send a written report of any deviation from the rules of Part 107 during an emergency requiring immediate action, upon request of the Administrator. Both reports will be short and limited to capturing basic information. As such, completion of these reports will not require professional skills beyond basic literacy.

Below is a summary of the major compliance requirements of the final rule.

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107

Operational Limitations	• Unmanned aircraft must weigh less than 55 lbs. (25 kg). • Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer.

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[213] Based on analysis by AUVSI of the 3,136 exemptions filed through January 2016, over 90% of the exemptions are held by small businesses *http://www.auvsi.org/auvsiresources/exemptions.*

[214] See the "Commercial (Non Modeler) small UAS Fleet Forecasts: Reconciling Differences in the Registry IFR and Part 107 Final Rule" section of the regulatory evaluation for more detail to the low case and high case ranges.

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107—Continued

	• At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses. • Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle. • Daylight-only operations (30 minutes before official sunrise to 30 minutes after official sunset, local time). • Must yield right of way to other aircraft. • May use visual observer (VO) but not required. • First-person view camera cannot satisfy "see-and-avoid" requirement but can be used as long as requirement is satisfied in other ways. • Maximum groundspeed of 100 mph (87 knots). • Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure. • Minimum weather visibility of 3 miles from control station. • Operations in Class B, C, D and E airspace are allowed with the required ATC permission. • Operations in Class G airspace are allowed without ATC permission. • No person may act as a remote pilot in command or VO for more than one unmanned aircraft operation at one time. • No operations from a moving aircraft. • No operations from a moving vehicle unless the operation is over a sparsely populated area. • No careless or reckless operations. • No carriage of hazardous materials. • Requires preflight inspection by the remote pilot in command. • A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. • Foreign-registered small unmanned aircraft are allowed to operate under part 107 if they satisfy the requirements of part 375. • External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft. • Transportation of property for compensation or hire allowed provided that— ○ The aircraft, including its attached systems, payload and cargo weigh less than 55 pounds total; ○ The flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and ○ The flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession. • Most of the restrictions discussed above are waivable if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.
Remote Pilot in Command Certification and Responsibilities.	• Establishes a remote pilot in command position. • A person operating a small UAS must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command). • To qualify for a remote pilot certificate, a person must: ○ Demonstrate aeronautical knowledge by either: ▪ Passing an initial aeronautical knowledge test at an FAA-approved knowledge testing center; or ▪ Hold a part 61 pilot certificate, complete a flight review within the previous 24 months, and complete a small UAS online training course provided by the FAA. ○ Be vetted by the Transportation Security Administration. ○ Be at least 16 years old. • Part 61 pilot certificate holders will obtain a temporary remote pilot certificate immediately upon submission of their application for a permanent certificate. Other applicants will obtain a temporary remote pilot certificate upon successful completion of TSA security vetting. The FAA anticipates that it will be able to issue a temporary remote pilot certificate within 10 business days after receiving a completed remote pilot certificate application. • Until international standards are developed, foreign-certificated UAS pilots will be required to obtain an FAA-issued remote pilot certificate with a small UAS rating. A remote pilot in command must: • Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the rule. • Report to the FAA within 10 days of any operation that results in at least serious injury, loss of consciousness, or property damage of at least $500. • Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation. • Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2). A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency.
Aircraft Requirements	• FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation.

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107—Continued

Model Aircraft	• Part 107 does not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. • The rule codifies the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.
Operational Limitations	• Unmanned aircraft must weigh less than 55 lbs. (25 kg). • Visual line-of-sight (VLOS) only; the unmanned aircraft must remain within VLOS of the remote pilot in command and the person manipulating the flight controls of the small UAS. Alternatively, the unmanned aircraft must remain within VLOS of the visual observer. • At all times the small unmanned aircraft must remain close enough to the remote pilot in command and the person manipulating the flight controls of the small UAS for those people to be capable of seeing the aircraft with vision unaided by any device other than corrective lenses. • Small unmanned aircraft may not operate over any persons not directly participating in the operation, not under a covered structure, and not inside a covered stationary vehicle. • Daylight-only operations (30 minutes before official sunrise to 30 minutes after official sunset, local time). • Must yield right of way to other aircraft, manned or unmanned. • May use visual observer (VO) but not required. • First-person view camera cannot satisfy "see-and-avoid" requirement but can be used as long as requirement is satisfied in other ways. • Maximum groundspeed of 100 mph (87 knots). • Maximum altitude of 400 feet above ground level (AGL) or, if higher than 400 feet AGL, remain within 400 feet of a structure. • Minimum weather visibility of 3 miles from control station. • Operations in Class B, C, D and E airspace are allowed with the required ATC permission. • Operations in Class G airspace are allowed without ATC permission. • No person may act as a remote pilot in command or VO for more than one unmanned aircraft operation at one time. • No operations from a moving aircraft. • No operations from a moving vehicle unless the operation is over a sparsely populated area. • No careless or reckless operations. • No carriage of hazardous materials. • Requires preflight inspection by the remote pilot in command. • A person may not operate a small unmanned aircraft if he or she knows or has reason to know of any physical or mental condition that would interfere with the safe operation of a small UAS. • Foreign-registered small unmanned aircraft are allowed to operate under part 107 if they satisfy the requirements of part 375. • External load operations are allowed if the object being carried by the unmanned aircraft is securely attached and does not adversely affect the flight characteristics or controllability of the aircraft. • Transportation of property for compensation or hire allowed provided that— ○ The aircraft, including its attached systems, payload and cargo weigh less than 55 pounds total; ○ The flight is conducted within visual line of sight and not from a moving vehicle or aircraft; and ○ The flight occurs wholly within the bounds of a State and does not involve transport between (1) Hawaii and another place in Hawaii through airspace outside Hawaii; (2) the District of Columbia and another place in the District of Columbia; or (3) a territory or possession of the United States and another place in the same territory or possession. • Most of the restrictions discussed above are waivable if the applicant demonstrates that his or her operation can safely be conducted under the terms of a certificate of waiver.
Remote Pilot in Command Certification and Responsibilities.	• Establishes a remote pilot in command position. • A person operating a small UAS must either hold a remote pilot airman certificate with a small UAS rating or be under the direct supervision of a person who does hold a remote pilot certificate (remote pilot in command). • To qualify for a remote pilot certificate, a person must: ○ Demonstrate aeronautical knowledge by either: ▪ Passing an initial aeronautical knowledge test at an FAA-approved knowledge testing center; or ▪ Hold a part 61 pilot certificate, complete a flight review within the previous 24 months, and complete a small UAS online training course provided by the FAA. ○ Be vetted by the Transportation Security Administration. ○ Be at least 16 years old. • Part 61 pilot certificate holders can obtain a temporary remote pilot certificate immediately upon submission of their application for a permanent certificate. • Until international standards are developed, foreign-certificated UAS pilots will be required to obtain a remote pilot certificate with a small UAS rating. A remote pilot in command must: • Make available to the FAA, upon request, the small UAS for inspection or testing, and any associated documents/records required to be kept under the rule. • Report to the FAA within 10 days of any operation that results in serious or fatal injury , loss of consciousness, or property damage of at least $500. • Conduct a preflight inspection, to include specific aircraft and control station systems checks, to ensure the small UAS is in a condition for safe operation.

TABLE 1—SUMMARY OF THE MAJOR PROVISIONS OF PART 107—Continued

	• Ensure that the small unmanned aircraft complies with the existing registration requirements specified in § 91.203(a)(2). A remote pilot in command may deviate from the requirements of this rule in response to an in-flight emergency. • FAA airworthiness certification is not required. However, the remote pilot in command must conduct a preflight check of the small UAS to ensure that it is in a condition for safe operation.
Model Aircraft	• Part 107 does not apply to model aircraft that satisfy all of the criteria specified in section 336 of Public Law 112–95. • The rule codifies the FAA's enforcement authority in part 101 by prohibiting model aircraft operators from endangering the safety of the NAS.

6. A Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect The Impact on Small Entities Was Rejected

With respect to the potential operator costs, we assume that each operator will be a new entrant into the commercial market and that each operator will have two small UAS. The following table shows the final rule's estimated out-of-pocket startup and recurrent direct compliance costs for a new small UAS operator or owner.

SMALL UAS OPERATOR STARTUP AND RECURRENT COSTS REMOTE PILOT APPLICANT/REMOTE PILOT OUT-OF-POCKET COSTS

Type of cost	Cost	
	Initial	Recurrent
Remote Pilot Applicant/Remote Pilot:		
Knowledge Test Fees	$150.00	$150.00
Owner:		
Anti-Collision Lighting	32.00	32.00
Current Part 61 Remote Pilot Applicant:		
Positive Identification of the Applicant Fee	50.00	

* Details may not add to row or column totals due to rounding.

The estimated out-of-pocket cost for an individual to become FAA certificated as a remote pilot with a small UAS rating is $150, which is less than the cost of any other airmen certification that allows non-recreational operations in the NAS.[215] The FAA does not believe this amount on a per operator basis to be a significant negative economic impact to small entity operators because $150 is relatively inexpensive to be licensed for operation of a commercial vehicle.

The FAA expects this final rule will have a significant positive economic impact because it enables new businesses to operate small UAS for hire and will stimulate a manufacturing support industry. The FAA believes that most, if not all, of these new commercial activities will be conducted by operators of small UAS who are small business entities. Therefore, the FAA believes that this final rule will have a positive significant impact on a substantial number of entities.

The FAA considered both more costly and less costly alternatives as part of its final rule. The FAA rejected the more costly alternatives due to policy considerations and undue burden that will be imposed on small UAS operators. The less costly alternatives and the FAA's reasons for rejecting or accepting those alternatives in the NPRM are discussed below.

The NPRM noted that the FAA considered an online test-taking option. Ultimately, this option was rejected due to concerns about cheating and the protection of personally identifiable information (PII). Because an applicant for a remote pilot certificate with small UAS rating is not required to pass a practical test, knowledge testing is the only way for the FAA to determine that a remote pilot has the requisite aeronautical knowledge to operate safely in the NAS. Therefore, it is imperative that the testing methodology being used assures that knowledge is demonstrated. Online testing cannot yet provide adequate proctoring of a test to ensure, among other things, that the test-taker is not taking the test for someone else or using reference material or other unapproved aids to help answer the test questions. Concerns with online testing are not limited to cheating. Because the knowledge test questions are pulled from a test bank with a finite number of questions, limiting access to that database to knowledge testing centers ensures the continued security and integrity of the test questions.

The next alternative the FAA considered was to proceed on with the provisions proposed in the notice of proposed rulemaking (NPRM). Due to the large number of comments, we have decided to incorporate some of the additional types of operations received from commenters to this final rule. The FAA discusses the comments we received on the proposed rule and their resolutions earlier in the preamble.

Also, in the NPRM, the FAA considered creating a separate micro UAS classification for UAS weighing no more than 4.4 pounds (2 kilograms). The NPRM went on to list the following restrictions that the FAA was considering for such a micro UAS classification:

- Require that the micro UAS be made out of frangible materials that break, distort, or yield on impact.
- Require that the unmanned aircraft weigh no more than 4.4 pounds.
- Impose a maximum airspeed of 30 knots.
- Impose a maximum altitude of 400 feet AGL.
- Restrict flight distance to 1,500 feet from, and within the visual line of sight of, the operator
- Ban the use of first person view during operations.
- Require the operator to maintain manual control of the flight path of the micro UAS and, therefore, ban the use of automation to control the flight path.
- Limit operations to Class G airspace.
- Require the micro UAS to maintain a distance of at least 5 nautical miles from any airport.

With these additional operating restrictions, the NPRM also proposed to: (1) Allow micro UAS to fly over people not involved with the operation; and (2) create a separate airman certificate with a micro UAS rating.

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[215] To become certificated as remote pilot with a small UAS rating, an individual is only required to pass a knowledge test. The certification does not require an individual to attend ground school or to pass a practical skills exam, both of which are required to receive an airmen's certification for sport pilot and above.

After consideration of the comments that the proposed micro UAS restrictions would limit the utility of such operations and safety concerns that remain even with the operating limitations proposed in the NPRM, the FAA has determined that a different framework to regulate micro UAS is needed. Because the public has not yet been given an opportunity to comment on an alternate framework for micro UAS operations, the FAA has determined that a new comment period should be provided for the micro UAS operation requirements. Accordingly, the FAA will move to expeditiously issue a new rule detailing a new more performance-based framework to integrate micro UAS into the NAS while addressing the safety concerns raised by the stakeholders. In the meantime, the FAA will finalize the remainder of this rule to immediately integrate all other small UAS operations into the NAS.

The FAA also considered allowing all small UAS to fly over people not involved with the operation. Manned aircraft are generally permitted to fly over people because manned aircraft are formally evaluated for airworthiness through the airworthiness certification process, which could have significant costs to both the small UAS manufacturer and operator. Because of the high risk of injury, almost all other countries that currently regulate UAS generally do not allow small unmanned aircraft to fly over people or congested areas.[216] The risk associated with flight over people is due to mechanical reliability issues that a remote pilot in command may have a limited opportunity to evaluate without airworthiness certification or a more extensive maintenance process. At this time, the FAA has no data establishing how that risk could be mitigated through operational constraints (whether performance-based or otherwise), other than a prohibition on flight over people.

Accordingly, this rule will retain the general prohibition on flight over people, but with two changes. First, this rule will allow a small unmanned aircraft to be operated over a person who is inside a stationary covered vehicle. Second, this rule will make the restriction on operating a small unmanned aircraft over people waivable. This will allow the FAA to consider, on a case-by-case basis, any additional mitigations that are incorporated into a small UAS operation. The FAA will grant a waiver request allowing small unmanned aircraft flight over people if the applicant establishes that his or her operation can safely be conducted under the terms of a certificate of waiver.

In section 333 of Public Law 112–95, Congress also directed the Secretary to determine whether "certain unmanned aircraft systems may operate safely in the national airspace system." The FAA currently accommodates non-recreational small UAS use through various mechanisms, such as special airworthiness certificates, exemptions, and certificates of authorizations (COA). As an alternative to this final rule, the FAA considered continuing to issue special airworthiness certificates, exemptions, and COAs to all non-recreational small UAS users. We anticipate that many of the operations that would previously require exemptions and COAs will now fall under the purview of part 107, which generally does not require an exemption or a COA prior to operation.

The FAA expects this final rule will have a significant positive economic impact because it enables new businesses to operate small UAS for hire and will stimulate a manufacturing support industry. The FAA believes that most, if not all, of these new commercial activities will be conducted by operators of small UAS who are small business entities. Therefore, the FAA believes that this final rule will have a positive significant impact on a substantial number of entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. Under this rule's requirements, additional access to United States airspace is permitted, so the rule does not create an obstacle to foreign commerce.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million. The assessment may be included in conjunction with other assessments, as it is here.

This final rule is unlikely to result in expenditure by State, local or Tribal governments of more than $150 million annually. The final rule will potentially result in an expenditure of much more than that magnitude by pilots seeking remote pilot certificates. We have considered alternatives to this rulemaking, which are discussed above in the "*Describe alternatives considered*" section of the regulatory flexibility analysis.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following information collection requirements:

- Submission of an application for a remote pilot certificate with a small UAS rating;
- reporting any accident that results in at least serious injury to any person or any loss of consciousness; or damage to any property, other than the small unmanned aircraft, for which the cost of repair (including materials and labor) exceeds $500; or the fair market value of the property exceeds $500 in the event of total loss.
- application for certificate of waiver or authorization to allow a small UAS operation to deviate from certain operating provisions of part 107.
- during an emergency requiring immediate action, each remote pilot in command who deviates from any rule in part 107 shall, upon request of the Administrator, send a written report of that deviation to the Administrator.

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[216] Some countries, such as the United Kingdom, allow approval for flight in congested areas on a case-by-case basis. *See* GAO, *Unmanned Aerial Systems: FAA Continues Progress toward Integration into the National Airspace* at 32 (July 2015).

Below, we discuss each of these information-collection requirements in more detail. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

1. Obtaining a Remote Pilot Certificate With a Small UAS Rating

Summary: The FAA's statute[217] prohibits a person from serving as an airman without an airman certificate. This final rule will create a new airman certificate for remote pilots to satisfy the statutory requirement. The airman certificate will be called a remote pilot certificate with a small UAS rating, and in order to obtain it, the applicant will have to either: (1) Take and pass an aeronautical knowledge test; or (2) for those part 61 pilots that have completed a flight review within the previous 24 months, take an on-line training course. Upon successful completion of either the aeronautical knowledge test or online training, the applicant will submit an application for the certificate.

To take and pass an aeronautical knowledge test, a person will have to: (1) Apply to take the test at an FAA-approved Knowledge Testing Center; (2) take the test; and (3) obtain an airman knowledge test report showing that he or she passed the test. After passing a knowledge test, the person will then apply for the certificate by: (1) Filling out and submitting an application for the certificate; and (2) attaching evidence showing that the person passed the airman knowledge test.

For a flight review current part 61 pilot certificate holders seeking to substitute the initial training course for the initial aeronautical knowledge test, the applicant will first set up an account with the FAA by providing their email address, first name, last name, suffix, and zip code. Once the applicant receives an email from the FAA to finish creating their profile, the applicant will be able to log-on, complete the course, and obtain a course completion certificate. The applicant will then (1) fill out and submit an application for the remote pilot certificate with small UAS rating; (2) present a copy of the on-line training course completion certificate and his or her logbook upon application to demonstrate that he or she has satisfied the flight review requirement within the preceding 24 months. The on-line training course is available to anyone who sets up an account with the FAA.

The above requirements do not result in a new collection of information, but instead expand an existing collection of information that is approved under OMB control number 2120–0021. This collection of information governs information that the FAA collects to certificate pilots and flight instructors. The above requirements will increase the burden of this already-existing collection of information.

Use: The above requirements will be used by the FAA to issue airman certificates to remote pilots in command in order to satisfy the statutory requirement that an airman must possess an airman certificate.

Estimate of Increase in Annual Burden:

Low Case Scenario
2016-2018

Final Rule Requirement	Pages Per Application	Applicant Time (Hours)	Total			Annual		
			# of Pages	Time (Hours)	Cost ($Mil)	# of Pages	Time (Hours)	Cost ($Mil)
Application for Remote Pilot Certificate	1	0.25	117,686	29,421	$0.85	39,229	9,807	$0.28
Knowledge Test Application	3	0.25	378,397	31,533	$0.80	126,132	10,511	$0.27
Knowledge Test Exam Time	70	3	8,829,260	378,397	$9.65	2,943,087	126,132	$3.22
On-line Training for Current pt 61 pilots	60	2	181,217	6,041	$0.15	60,406	2,014	$0.05
Create Account for On-Line Training	1	0.25	117,686	29,421	$0.85	39,229	9,807	$0.28
On-line Training for Knowledge Test Applicants	60	2	7,567,938	252,265	$6.43	2,522,646	84,088	$2.14
Airman Knowledge Test Report	1	0.25	126,132	31,533	$0.65	42,044	10,511	$0.22

*Details may not add to row or column totals due to rounding

High Case Scenario
2016-2018

Final Rule Requirement	Pages Per Application	Applicant Time (Hours)	Total			Annual		
			# of Pages	Time (Hours)	Cost ($Mil)	# of Pages	Time (Hours)	Cost ($Mil)
Application for Remote Pilot Certificate	1	0.25	1,583,766	395,942	$10.19	527,922	131,981	$3.40
Knowledge Test Application	3	0.25	5,216,461	434,705	$11.04	1,738,820	144,902	$3.68
Knowledge Test Exam Time	70	3	121,717,427	5,216,461	$132.47	40,572,476	1,738,820	$44.16
On-line Training for Current pt 61 pilots	60	2	181,217	6,041	$0.15	60,406	2,014	$0.05
Create Account for On-Line Training	1	0.25	1,583,766	395,942	$10.19	527,922	131,981	$3.40
On-line Training for Knowledge Test Applicants	60	2	104,329,223	3,477,641	$88.31	34,776,408	1,159,214	$29.44
Airman Knowledge Test Report	1	0.25	1,738,820	434,705	$8.93	579,607	144,902	$2.98

*Details may not add to row or column totals due to rounding

2. Accident Reporting

Summary: To ensure proper oversight of small UAS operations, this rule will require a remote pilot in command to report to the FAA any small UAS operation that results in: (1) At least serious injury to any person or any loss of consciousness; or (2) damage to any property, other than the small unmanned aircraft, unless the cost of repair (including materials and labor) or fair market value in the event of total loss does not exceed $500.

After receiving this report, the FAA may conduct further investigation to determine whether any FAA regulations were violated. The report must be made to the nearest Federal Aviation Administration Flight Standards District Office, or one of the Regional Operations Centers or the Washington Operations Center, in a manner acceptable to the Administrator. The

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[217] 49 U.S.C. 44711(a)(2)(A).

FAA emphasizes that this reporting requirement will be triggered only during operations that result in the conditions specified above.

This requirement will constitute a new collection of information, and the FAA has submitted it to OMB for review and a control number. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Use: The above requirements will be used by the FAA to ensure proper oversight of small UAS operations. A report of an accident that results in an injury to a person or property damage may serve to initiate an FAA investigation into whether FAA regulations were violated.

Annual Burden Estimate

There is one page of paperwork associated with reporting an accident and it will take an applicant 0.25 hours to complete. The FAA does not have the data needed to quantify the paperwork burden imposed by this requirement.

3. Emergency Powers

Summary: The remote pilot in command must, upon FAA request, submit a report to the FAA if he or she has exercises his or her emergency powers. This report must provide a detailed explanation of what happened.

Use: The above requirements will be used by the FAA to ensure proper oversight of small UAS operations. A report will help the FAA to better understand the reasons for a pilot deviating from part 107.

Annual Burden Estimate

There is one page of paperwork associated with reporting the use of emergency powers that will take an applicant 0.3 hours to complete. The FAA does not have the data needed to quantify the paperwork burden imposed by this requirement.

The above requirements do not result in a new collection of information, but instead expand an existing collection of information that is approved under OMB control number 2120–0005. This collection of information governs, among other things, reports that are provided to the FAA by pilots in command who have exercised emergency powers. The above requirements will increase the burden of this already-existing collection of information.

4. Certificate of Waiver

The certificate of waiver will allow a remote pilot in command conducting a small UAS operation to deviate from certain provisions of part 107. To obtain a certificate of waiver, an applicant will submit a request containing a complete description of the proposed operation and a justification, including supporting data and documentation as necessary, that establishes that the proposed operation can safely be conducted under the terms of a certificate of waiver.

The FAA expects that the amount of data and analysis required as part of the application will be proportional to the specific relief that is requested. Similarly, the FAA anticipates that the time required to make a determination regarding waiver requests will vary based on the complexity of the request. For example, a request for a major deviation from part 107 for an operation that takes place in a congested metropolitan area with heavy air traffic will likely require more data and analysis than a request for a minor deviation for an operation that takes place in a sparsely populated area with minimal air traffic. If a certificate of waiver is granted, that certificate may include additional conditions and limitations designed to ensure that the small UAS operation can safely be conducted under the terms of a certificate of waiver.

Use

This collection of information by the FAA governs applicants requesting a certificate of waiver for an aviation event. The above requirements will increase the burden of this already-existing collection of information.

Annual Burden Estimate

The above requirements will not result in a new collection of information, but will instead expand an existing OMB-approved collection of information that is approved under OMB control number 2120–0027. We cannot quantify total costs, over the 5-year analysis period for waiver activities because The FAA does not have the information to estimate the number of waiver requests it will receive, but expects that individuals would apply for waivers only in instances in which the benefits exceed the costs. The application for certificate of waiver is a minimum of three pages and it is estimated to take at least 0.75 hours to complete.

5. Total Annual Burden Estimate

The total annualized burden estimate of the information-collection requirements associated with this rule is as follows:

Final rule requirement	Total no. of pages (millions)	Total cost (millions)	Annual cost (millions)
Low Case:			
Remote Pilot Certificate	17.3	$19.4	$6.5
Accident Reporting	Unknown	Unknown	Unknown
Emergency Powers	Unknown	Unknown	Unknown
Certificate of Waiver	Unknown	Unknown	Unknown
High Case:			
Remote Pilot Certificate	236.4	$261.3	$87.1
Accident Reporting	Unknown	Unknown	Unknown
Emergency Powers	Unknown	Unknown	Unknown
Certificate of Waiver	Unknown	Unknown	Unknown

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f and involves no extraordinary circumstances. The FAA has documented the categorical exclusion, including its noise analysis and review of the potential for extraordinary circumstances, and has placed a copy of it in the docket for this rule.

H. Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, the FAA requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. The agency did not receive any comments, and has determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation. The Department continues to participate in the evaluation of ICAO's SARPs and any recommended updates to reflect amendments necessary to address issues unique to the operation of remotely piloted aircraft.

VI. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies* or
- Accessing the Government Publishing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced previously.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Recording and recordkeeping requirements.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 61

Aircraft, Airmen, Alcohol abuse, Aviation safety, Drug abuse, Recreation and recreation areas, Reporting and recordkeeping requirements, Security measures, Teachers.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 101

Aircraft, Aviation Safety.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures, Signs and symbols, Small unmanned aircraft, Unmanned aircraft.

14 CFR Part 119

Air carriers, Aircraft, Aviation safety.

14 CFR Part 133

Aircraft, Aviation safety.

14 CFR Part 183

Airmen, Authority delegations (Government agencies).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(f), 106(g), 40101 note, 40105, 40113, 44701–44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303; Sec. 333 of Public Law 112–95, 126 Stat. 75.

■ 2. In § 21.1, revise paragraph (a) introductory text to read as follows:

§ 21.1 Applicability and definitions.

(a) Except for aircraft subject to the provisions of part 107 of this chapter, this part prescribes—

* * * * *

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 3. The authority citation for part 43 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 4. In § 43.1, revise paragraph (b) to read as follows:

§ 43.1 Applicability.

* * * * *

(b) This part does not apply to—

(1) Any aircraft for which the FAA has issued an experimental certificate, unless the FAA has previously issued a different kind of airworthiness certificate for that aircraft;

(2) Any aircraft for which the FAA has issued an experimental certificate under the provisions of § 21.191(i)(3) of this chapter, and the aircraft was previously issued a special airworthiness certificate in the light-sport category under the provisions of § 21.190 of this chapter; or

(3) Any aircraft subject to the provisions of part 107 of this chapter.

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 5. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302.

■ 6. In § 61.1, revise paragraph (a) introductory text to read as follows:

§ 61.1 Applicability and definitions.

(a) Except as provided in part 107 of this chapter, this part prescribes:

* * * * *

■ 7. Add § 61.8 to read as follows:

§ 61.8 Inapplicability of unmanned aircraft operations.

Any action conducted pursuant to part 107 of this chapter or Subpart E of part 101 of this chapter cannot be used to meet the requirements of this part.

■ 8. In § 61.193, revise paragraph (b) to read as follows:

§ 61.193 Flight instructor privileges.

* * * * *

(b) A person who holds a flight instructor certificate is authorized, in a form and manner acceptable to the Administrator, to:

(1) Accept an application for a student pilot certificate or, for an applicant who holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, a remote pilot certificate with a small UAS rating;

(2) Verify the identity of the applicant; and

(3) Verify that an applicant for a student pilot certificate meets the eligibility requirements in § 61.83 or an applicant for a remote pilot certificate with a small UAS rating meets the eligibility requirements in § 107.61 of this chapter.

■ 9. In § 61.413, revise paragraph (b) to read as follows:

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

* * * * *

(b) A person who holds a flight instructor certificate with a sport pilot rating is authorized, in a form and manner acceptable to the Administrator, to:

(1) Accept an application for a student pilot certificate or, for an applicant who holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, a remote pilot certificate with a small UAS rating;

(2) Verify the identity of the applicant; and

(3) Verify that an applicant for a student pilot certificate meets the eligibility requirements in § 61.83.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 10. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 11. In § 91.1, revise paragraph (a) introductory text and add paragraphs (e) and (f) to read as follows:

§ 91.1 Applicability.

(a) Except as provided in paragraphs (b), (c), (e), and (f) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft within the United States, including the waters within 3 nautical miles of the U.S. coast.

* * * * *

(e) This part does not apply to any aircraft or vehicle governed by part 103 of this chapter, or subparts B, C, or D of part 101 of this chapter.

(f) Except as provided in §§ 107.13, 107.27, 107.47, 107.57, and 107.59 of this chapter, this part does not apply to any aircraft governed by part 107 of this chapter.

PART 101—MOORED BALLOONS, KITES, AMATEUR ROCKETS, UNMANNED FREE BALLOONS, AND CERTAIN MODEL AIRCRAFT

■ 12. The authority citation for part 101 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101 note, 40103, 40113–40114, 45302, 44502, 44514, 44701–44702, 44721, 46308, Sec. 336(b), Pub. L. 112–95, 126 Stat. 77.

■ 13. The heading for part 101 is revised to read as set forth above.

■ 14. In § 101.1, add paragraph (a)(5) to read as follows:

§ 101.1 Applicability.

(a) * * *

(5) Any model aircraft that meets the conditions specified in § 101.41. For purposes of this part, a model aircraft is an unmanned aircraft that is:

(i) Capable of sustained flight in the atmosphere;

(ii) Flown within visual line of sight of the person operating the aircraft; and

(iii) Flown for hobby or recreational purposes.

* * * * *

■ 15. Add subpart E, consisting of §§ 101.41 and 101.43, to read as follows:

Subpart E—Special Rule for Model Aircraft

§ 101.41 Applicability.

This subpart prescribes rules governing the operation of a model aircraft (or an aircraft being developed as a model aircraft) that meets all of the following conditions as set forth in section 336 of Public Law 112–95:

(a) The aircraft is flown strictly for hobby or recreational use;

(b) The aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;

(c) The aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization;

(d) The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; and

(e) When flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower (when an air traffic facility is located at the airport) with prior notice of the operation.

§ 101.43 Endangering the safety of the National Airspace System.

No person may operate model aircraft so as to endanger the safety of the national airspace system.

■ 16. Add part 107 to read as follows:

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

Sec.

Subpart A—General

107.1 Applicability.
107.3 Definitions.
107.5 Falsification, reproduction or alteration.
107.7 Inspection, testing, and demonstration of compliance.
107.9 Accident reporting.

Subpart B—Operating Rules

107.11 Applicability.
107.12 Requirement for a remote pilot certificate with a small UAS rating.
107.13 Registration.
107.15 Condition for safe operation.
107.17 Medical condition.
107.19 Remote pilot in command.
107.21 In-flight emergency.
107.23 Hazardous operation.
107.25 Operation from a moving vehicle or aircraft.
107.27 Alcohol or drugs.
107.29 Daylight operation.
107.31 Visual line of sight aircraft operation.
107.33 Visual observer.
107.35 Operation of multiple small unmanned aircraft.
107.36 Carriage of hazardous material.
107.37 Operation near aircraft; right-of-way rules.
107.39 Operation over human beings.
107.41 Operation in certain airspace.
107.43 Operation in the vicinity of airports.
107.45 Operation in prohibited or restricted areas.
107.47 Flight restrictions in the proximity of certain areas designated by notice to airmen.
107.49 Preflight familiarization, inspection, and actions for aircraft operation.
107.51 Operating limitations for small unmanned aircraft.

Subpart C—Remote Pilot Certification

107.53 Applicability.
107.57 Offenses involving alcohol or drugs.
107.59 Refusal to submit to an alcohol test or to furnish test results.
107.61 Eligibility.
107.63 Issuance of a remote pilot certificate with a small UAS rating.
107.64 Temporary certificate.
107.65 Aeronautical knowledge recency.
107.67 Knowledge tests: General procedures and passing grades.
107.69 Knowledge tests: Cheating or other unauthorized conduct.
107.71 Retesting after failure.
107.73 Initial and recurrent knowledge tests.
107.74 Initial and recurrent training courses.
107.77 Change of name or address.
107.79 Voluntary surrender of certificate.

Subpart D—Waivers

107.200 Waiver policy and requirements.
107.205 List of regulations subject to waiver.

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5); Sec. 333 of Pub. L. 112–95, 126 Stat. 75.

Subpart A—General

§ 107.1 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the registration, airman certification, and operation of civil small unmanned aircraft systems within the United States.

(b) This part does not apply to the following:

(1) Air carrier operations;

(2) Any aircraft subject to the provisions of part 101 of this chapter; or

(3) Any operation that a remote pilot in command elects to conduct pursuant to an exemption issued under section 333 of Public Law 112–95, unless otherwise specified in the exemption.

§ 107.3 Definitions.

The following definitions apply to this part. If there is a conflict between the definitions of this part and definitions specified in § 1.1 of this chapter, the definitions in this part control for purposes of this part:

Control station means an interface used by the remote pilot to control the flight path of the small unmanned aircraft.

Corrective lenses means spectacles or contact lenses.

Small unmanned aircraft means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small unmanned aircraft system (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

Unmanned aircraft means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Visual observer means a person who is designated by the remote pilot in command to assist the remote pilot in command and the person manipulating the flight controls of the small UAS to see and avoid other air traffic or objects aloft or on the ground.

§ 107.5 Falsification, reproduction or alteration.

(a) No person may make or cause to be made—

(1) Any fraudulent or intentionally false record or report that is required to be made, kept, or used to show compliance with any requirement under this part.

(2) Any reproduction or alteration, for fraudulent purpose, of any certificate, rating, authorization, record or report under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for any of the following:

(1) Denial of an application for a remote pilot certificate or a certificate of waiver,

(2) Suspension or revocation of any certificate or waiver issued by the Administrator under this part and held by that person; or

(3) A civil penalty.

§ 107.7 Inspection, testing, and demonstration of compliance.

(a) A remote pilot in command, owner, or person manipulating the flight controls of a small unmanned aircraft system must, upon request, make available to the Administrator:

(1) The remote pilot certificate with a small UAS rating; and

(2) Any other document, record, or report required to be kept under the regulations of this chapter.

(b) The remote pilot in command, visual observer, owner, operator, or person manipulating the flight controls of a small unmanned aircraft system must, upon request, allow the Administrator to make any test or inspection of the small unmanned aircraft system, the remote pilot in command, the person manipulating the flight controls of a small unmanned aircraft system, and, if applicable, the visual observer to determine compliance with this part.

§ 107.9 Accident reporting.

No later than 10 calendar days after an operation that meets the criteria of either paragraph (a) or (b) of this section, a remote pilot in command must report to the FAA, in a manner acceptable to the Administrator, any operation of the small unmanned aircraft involving at least:

(a) Serious injury to any person or any loss of consciousness; or

(b) Damage to any property, other than the small unmanned aircraft, unless one of the following conditions is satisfied:

(1) The cost of repair (including materials and labor) does not exceed $500; or

(2) The fair market value of the property does not exceed $500 in the event of total loss.

Subpart B—Operating Rules

§ 107.11 Applicability.

This subpart applies to the operation of all civil small unmanned aircraft systems subject to this part.

§ 107.12 Requirement for a remote pilot certificate with a small UAS rating.

(a) Except as provided in paragraph (c) of this section, no person may manipulate the flight controls of a small unmanned aircraft system unless:

(1) That person has a remote pilot certificate with a small UAS rating issued pursuant to subpart C of this part and satisfies the requirements of § 107.65; or

(2) That person is under the direct supervision of a remote pilot in command and the remote pilot in command has the ability to immediately take direct control of the flight of the small unmanned aircraft.

(b) Except as provided in paragraph (c) of this section, no person may act as a remote pilot in command unless that person has a remote pilot certificate with a small UAS rating issued pursuant to Subpart C of this part and satisfies the requirements of § 107.65.

(c) The Administrator may, consistent with international standards, authorize an airman to operate a civil foreign-registered small unmanned aircraft without an FAA-issued remote pilot certificate with a small UAS rating.

§ 107.13 Registration.

A person operating a civil small unmanned aircraft system for purposes of flight must comply with the provisions of § 91.203(a)(2) of this chapter.

§ 107.15 Condition for safe operation.

(a) No person may operate a civil small unmanned aircraft system unless it is in a condition for safe operation. Prior to each flight, the remote pilot in command must check the small unmanned aircraft system to determine whether it is in a condition for safe operation.

(b) No person may continue flight of the small unmanned aircraft when he or she knows or has reason to know that the small unmanned aircraft system is no longer in a condition for safe operation.

§ 107.17 Medical condition.

No person may manipulate the flight controls of a small unmanned aircraft system or act as a remote pilot in command, visual observer, or direct participant in the operation of the small unmanned aircraft if he or she knows or has reason to know that he or she has a physical or mental condition that would interfere with the safe operation of the small unmanned aircraft system.

§ 107.19 Remote pilot in command.

(a) A remote pilot in command must be designated before or during the flight of the small unmanned aircraft.

(b) The remote pilot in command is directly responsible for and is the final authority as to the operation of the small unmanned aircraft system.

(c) The remote pilot in command must ensure that the small unmanned aircraft will pose no undue hazard to other people, other aircraft, or other property in the event of a loss of control of the aircraft for any reason.

(d) The remote pilot in command must ensure that the small UAS operation complies with all applicable regulations of this chapter.

(e) The remote pilot in command must have the ability to direct the small unmanned aircraft to ensure compliance with the applicable provisions of this chapter.

§ 107.21 In-flight emergency.

(a) In an in-flight emergency requiring immediate action, the remote pilot in command may deviate from any rule of this part to the extent necessary to meet that emergency.

(b) Each remote pilot in command who deviates from a rule under paragraph (a) of this section must, upon request of the Administrator, send a written report of that deviation to the Administrator.

§ 107.23 Hazardous operation.

No person may:

(a) Operate a small unmanned aircraft system in a careless or reckless manner so as to endanger the life or property of another; or

(b) Allow an object to be dropped from a small unmanned aircraft in a manner that creates an undue hazard to persons or property.

§ 107.25 Operation from a moving vehicle or aircraft.

No person may operate a small unmanned aircraft system—

(a) From a moving aircraft; or

(b) From a moving land or water-borne vehicle unless the small unmanned aircraft is flown over a sparsely populated area and is not transporting another person's property for compensation or hire.

§ 107.27 Alcohol or drugs.

A person manipulating the flight controls of a small unmanned aircraft system or acting as a remote pilot in command or visual observer must comply with the provisions of §§ 91.17 and 91.19 of this chapter.

§ 107.29 Daylight operation.

(a) No person may operate a small unmanned aircraft system during night.

(b) No person may operate a small unmanned aircraft system during periods of civil twilight unless the small unmanned aircraft has lighted anti-collision lighting visible for at least 3 statute miles. The remote pilot in command may reduce the intensity of the anti-collision lighting if he or she determines that, because of operating conditions, it would be in the interest of safety to do so.

(c) For purposes of paragraph (b) of this section, civil twilight refers to the following:

(1) Except for Alaska, a period of time that begins 30 minutes before official sunrise and ends at official sunrise;

(2) Except for Alaska, a period of time that begins at official sunset and ends 30 minutes after official sunset; and

(3) In Alaska, the period of civil twilight as defined in the Air Almanac.

§ 107.31 Visual line of sight aircraft operation.

(a) With vision that is unaided by any device other than corrective lenses, the remote pilot in command, the visual observer (if one is used), and the person manipulating the flight control of the small unmanned aircraft system must be able to see the unmanned aircraft throughout the entire flight in order to:

(1) Know the unmanned aircraft's location;

(2) Determine the unmanned aircraft's attitude, altitude, and direction of flight;

(3) Observe the airspace for other air traffic or hazards; and

(4) Determine that the unmanned aircraft does not endanger the life or property of another.

(b) Throughout the entire flight of the small unmanned aircraft, the ability described in paragraph (a) of this section must be exercised by either:

(1) The remote pilot in command and the person manipulating the flight controls of the small unmanned aircraft system; or

(2) A visual observer.

§ 107.33 Visual observer.

If a visual observer is used during the aircraft operation, all of the following requirements must be met:

(a) The remote pilot in command, the person manipulating the flight controls of the small unmanned aircraft system, and the visual observer must maintain effective communication with each other at all times.

(b) The remote pilot in command must ensure that the visual observer is able to see the unmanned aircraft in the manner specified in § 107.31.

(c) The remote pilot in command, the person manipulating the flight controls of the small unmanned aircraft system, and the visual observer must coordinate to do the following:

(1) Scan the airspace where the small unmanned aircraft is operating for any potential collision hazard; and

(2) Maintain awareness of the position of the small unmanned aircraft through direct visual observation.

§ 107.35 Operation of multiple small unmanned aircraft.

A person may not operate or act as a remote pilot in command or visual observer in the operation of more than one unmanned aircraft at the same time.

§ 107.36 Carriage of hazardous material.

A small unmanned aircraft may not carry hazardous material. For purposes of this section, the term hazardous material is defined in 49 CFR 171.8.

§ 107.37 Operation near aircraft; right-of-way rules.

(a) Each small unmanned aircraft must yield the right of way to all aircraft, airborne vehicles, and launch and reentry vehicles. Yielding the right of way means that the small unmanned aircraft must give way to the aircraft or vehicle and may not pass over, under, or ahead of it unless well clear.

(b) No person may operate a small unmanned aircraft so close to another aircraft as to create a collision hazard.

§ 107.39 Operation over human beings.

No person may operate a small unmanned aircraft over a human being unless that human being is:

(a) Directly participating in the operation of the small unmanned aircraft; or

(b) Located under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft.

§ 107.41 Operation in certain airspace.

No person may operate a small unmanned aircraft in Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport unless that person has prior authorization from Air Traffic Control (ATC).

§ 107.43 Operation in the vicinity of airports.

No person may operate a small unmanned aircraft in a manner that interferes with operations and traffic patterns at any airport, heliport, or seaplane base.

§ 107.45 Operation in prohibited or restricted areas.

No person may operate a small unmanned aircraft in prohibited or restricted areas unless that person has permission from the using or controlling agency, as appropriate.

§ 107.47 Flight restrictions in the proximity of certain areas designated by notice to airmen.

A person acting as a remote pilot in command must comply with the provisions of §§ 91.137 through 91.145 and 99.7 of this chapter.

§ 107.49 Preflight familiarization, inspection, and actions for aircraft operation.

Prior to flight, the remote pilot in command must:

(a) Assess the operating environment, considering risks to persons and property in the immediate vicinity both on the surface and in the air. This assessment must include:

(1) Local weather conditions;

(2) Local airspace and any flight restrictions;

(3) The location of persons and property on the surface; and

(4) Other ground hazards.

(b) Ensure that all persons directly participating in the small unmanned aircraft operation are informed about the operating conditions, emergency procedures, contingency procedures, roles and responsibilities, and potential hazards;

(c) Ensure that all control links between ground control station and the small unmanned aircraft are working properly;

(d) If the small unmanned aircraft is powered, ensure that there is enough available power for the small unmanned aircraft system to operate for the intended operational time; and

(e) Ensure that any object attached or carried by the small unmanned aircraft is secure and does not adversely affect the flight characteristics or controllability of the aircraft.

§ 107.51 Operating limitations for small unmanned aircraft.

A remote pilot in command and the person manipulating the flight controls of the small unmanned aircraft system must comply with all of the following operating limitations when operating a small unmanned aircraft system:

(a) The groundspeed of the small unmanned aircraft may not exceed 87 knots (100 miles per hour).

(b) The altitude of the small unmanned aircraft cannot be higher than 400 feet above ground level, unless the small unmanned aircraft:

(1) Is flown within a 400-foot radius of a structure; and

(2) Does not fly higher than 400 feet above the structure's immediate uppermost limit.

(c) The minimum flight visibility, as observed from the location of the control station must be no less than 3 statute miles. For purposes of this section, flight visibility means the average slant distance from the control station at which prominent unlighted objects may be seen and identified by day and prominent lighted objects may be seen and identified by night.

(d) The minimum distance of the small unmanned aircraft from clouds must be no less than:

(1) 500 feet below the cloud; and

(2) 2,000 feet horizontally from the cloud.

Subpart C—Remote Pilot Certification

§ 107.53 Applicability.

This subpart prescribes the requirements for issuing a remote pilot certificate with a small UAS rating.

§ 107.57 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or State statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for:

(1) Denial of an application for a remote pilot certificate with a small UAS rating for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of a remote pilot certificate with a small UAS rating.

(b) Committing an act prohibited by § 91.17(a) or § 91.19(a) of this chapter is grounds for:

(1) Denial of an application for a remote pilot certificate with a small UAS rating for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of a remote pilot certificate with a small UAS rating.

§ 107.59 Refusal to submit to an alcohol test or to furnish test results.

A refusal to submit to a test to indicate the percentage by weight of alcohol in the blood, when requested by a law enforcement officer in accordance with § 91.17(c) of this chapter, or a refusal to furnish or authorize the release of the test results requested by the Administrator in accordance with § 91.17(c) or (d) of this chapter, is grounds for:

(a) Denial of an application for a remote pilot certificate with a small UAS rating for a period of up to 1 year after the date of that refusal; or

(b) Suspension or revocation of a remote pilot certificate with a small UAS rating.

§ 107.61 Eligibility.

Subject to the provisions of §§ 107.57 and 107.59, in order to be eligible for a remote pilot certificate with a small UAS rating under this subpart, a person must:

(a) Be at least 16 years of age;

(b) Be able to read, speak, write, and understand the English language. If the applicant is unable to meet one of these requirements due to medical reasons, the FAA may place such operating limitations on that applicant's certificate as are necessary for the safe operation of the small unmanned aircraft;

(c) Not know or have reason to know that he or she has a physical or mental condition that would interfere with the safe operation of a small unmanned aircraft system; and

(d) Demonstrate aeronautical knowledge by satisfying one of the following conditions:

(1) Pass an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73(a); or

(2) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, complete an initial training course covering the areas of knowledge specified in § 107.74(a) in a manner acceptable to the Administrator.

§ 107.63 Issuance of a remote pilot certificate with a small UAS rating.

An applicant for a remote pilot certificate with a small UAS rating under this subpart must make the application in a form and manner acceptable to the Administrator.

(a) The application must include either:

(1) Evidence showing that the applicant passed an initial aeronautical knowledge test. If applying using a paper application, this evidence must be an airman knowledge test report showing passage of the knowledge test; or

(2) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in § 61.56, a certificate of completion of a part 107 initial training course.

(b) If the application is being made pursuant to paragraph (a)(2) of this section:

(1) The application must be submitted to a Flight Standards District Office, a designated pilot examiner, an airman certification representative for a pilot school, a certificated flight instructor, or other person authorized by the Administrator;

(2) The person accepting the application submission must verify the identity of the applicant in a manner acceptable to the Administrator; and

(3) The person making the application must, by logbook endorsement or other manner acceptable to the Administrator, show the applicant meets the flight review requirements specified in § 61.56 of this chapter.

§ 107.64 Temporary certificate.

(a) A temporary remote pilot certificate with a small UAS rating is issued for up to 120 calendar days, at which time a permanent certificate will be issued to a person whom the Administrator finds qualified under this part.

(b) A temporary remote pilot certificate with a small UAS rating expires:

(1) On the expiration date shown on the certificate;

(2) Upon receipt of the permanent certificate; or

(3) Upon receipt of a notice that the certificate sought is denied or revoked.

§ 107.65 Aeronautical knowledge recency.

A person may not operate a small unmanned aircraft system unless that person has completed one of the following, within the previous 24 calendar months:

(a) Passed an initial aeronautical knowledge test covering the areas of knowledge specified in § 107.73(a);

(b) Passed a recurrent aeronautical knowledge test covering the areas of knowledge specified in § 107.73(b); or

(c) If a person holds a pilot certificate (other than a student pilot certificate) issued under part 61 of this chapter and meets the flight review requirements specified in §§ 61.56, passed either an initial or recurrent training course covering the areas of knowledge specified in § 107.74(a) or (b) in a manner acceptable to the Administrator.

§ 107.67 Knowledge tests: General procedures and passing grades.

(a) Knowledge tests prescribed by or under this part are given by persons and in the manner designated by the Administrator.

(b) An applicant for a knowledge test must have proper identification at the time of application that contains the applicant's:

(1) Photograph;

(2) Signature;

(3) Date of birth, which shows the applicant meets or will meet the age requirements of this part for the certificate and rating sought before the expiration date of the airman knowledge test report; and

(4) Permanent mailing address. If the applicant's permanent mailing address is a post office box number, then the applicant must also provide a current residential address.

(c) The minimum passing grade for the knowledge test will be specified by the Administrator.

§ 107.69 Knowledge tests: Cheating or other unauthorized conduct.

(a) An applicant for a knowledge test may not:

(1) Copy or intentionally remove any knowledge test;

(2) Give to another applicant or receive from another applicant any part or copy of a knowledge test;

(3) Give or receive assistance on a knowledge test during the period that test is being given;

(4) Take any part of a knowledge test on behalf of another person;

(5) Be represented by, or represent, another person for a knowledge test;

(6) Use any material or aid during the period that the test is being given, unless specifically authorized to do so by the Administrator; and

(7) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) An applicant who the Administrator finds has committed an act prohibited by paragraph (a) of this section is prohibited, for 1 year after the date of committing that act, from:

(1) Applying for any certificate, rating, or authorization issued under this chapter; and

(2) Applying for and taking any test under this chapter.

(c) Any certificate or rating held by an applicant may be suspended or revoked if the Administrator finds that person has committed an act prohibited by paragraph (a) of this section.

§ 107.71 Retesting after failure.

An applicant for a knowledge test who fails that test may not reapply for the test for 14 calendar days after failing the test.

§ 107.73 Initial and recurrent knowledge tests.

(a) An initial aeronautical knowledge test covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Airspace classification, operating requirements, and flight restrictions affecting small unmanned aircraft operation;

(3) Aviation weather sources and effects of weather on small unmanned aircraft performance;

(4) Small unmanned aircraft loading;

(5) Emergency procedures;

(6) Crew resource management;

(7) Radio communication procedures;

(8) Determining the performance of small unmanned aircraft;

(9) Physiological effects of drugs and alcohol;

(10) Aeronautical decision-making and judgment;

(11) Airport operations; and

(12) Maintenance and preflight inspection procedures.

(b) A recurrent aeronautical knowledge test covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Airspace classification and operating requirements and flight restrictions affecting small unmanned aircraft operation;

(3) Emergency procedures;

(4) Crew resource management;

(5) Aeronautical decision-making and judgment;

(6) Airport operations; and

(7) Maintenance and preflight inspection procedures.

§ 107.74 Initial and recurrent training courses.

(a) An initial training course covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Effects of weather on small unmanned aircraft performance;

(3) Small unmanned aircraft loading;

(4) Emergency procedures;

(5) Crew resource management;

(6) Determining the performance of small unmanned aircraft; and

(7) Maintenance and preflight inspection procedures.

(b) A recurrent training course covers the following areas of knowledge:

(1) Applicable regulations relating to small unmanned aircraft system rating privileges, limitations, and flight operation;

(2) Emergency procedures;

(3) Crew resource management; and

(4) Maintenance and preflight inspection procedures.

§ 107.77 Change of name or address.

(a) *Change of name.* An application to change the name on a certificate issued under this subpart must be accompanied by the applicant's:

(1) Remote pilot certificate with small UAS rating; and

(2) A copy of the marriage license, court order, or other document verifying the name change.

(b) The documents in paragraph (a) of this section will be returned to the applicant after inspection.

(c) *Change of address.* The holder of a remote pilot certificate with small UAS rating issued under this subpart who has made a change in permanent mailing address may not, after 30 days from that date, exercise the privileges of the certificate unless the holder has notified the FAA of the change in address using one of the following methods:

(1) By letter to the FAA Airman Certification Branch, P.O. Box 25082, Oklahoma City, OK 73125 providing the new permanent mailing address, or if the permanent mailing address includes a post office box number, then the holder's current residential address; or

(2) By using the FAA Web site portal at *www.faa.gov* providing the new permanent mailing address, or if the permanent mailing address includes a post office box number, then the holder's current residential address.

§ 107.79 Voluntary surrender of certificate.

(a) The holder of a certificate issued under this subpart may voluntarily surrender it for cancellation.

(b) Any request made under paragraph (a) of this section must include the following signed statement or its equivalent: "I voluntarily surrender my remote pilot certificate with a small UAS rating for cancellation. This request is made for my own reasons, with full knowledge that my certificate will not be reissued to me unless I again complete the requirements specified in §§ 107.61 and 107.63."

Subpart D—Waivers

§ 107.200 Waiver policy and requirements.

(a) The Administrator may issue a certificate of waiver authorizing a deviation from any regulation specified in § 107.205 if the Administrator finds that a proposed small UAS operation can safely be conducted under the terms of that certificate of waiver.

(b) A request for a certificate of waiver must contain a complete description of the proposed operation and justification that establishes that the operation can safely be conducted under the terms of a certificate of waiver.

(c) The Administrator may prescribe additional limitations that the Administrator considers necessary.

(d) A person who receives a certificate of waiver issued under this section:

(1) May deviate from the regulations of this part to the extent specified in the certificate of waiver; and

(2) Must comply with any conditions or limitations that are specified in the certificate of waiver.

§ 107.205 List of regulations subject to waiver.

A certificate of waiver issued pursuant to § 107.200 may authorize a deviation from the following regulations of this part:

(a) Section 107.25—Operation from a moving vehicle or aircraft. However, no waiver of this provision will be issued to allow the carriage of property of another by aircraft for compensation or hire.

(b) Section 107.29—Daylight operation.

(c) Section 107.31—Visual line of sight aircraft operation. However, no waiver of this provision will be issued to allow the carriage of property of another by aircraft for compensation or hire.

(d) Section 107.33—Visual observer.

(e) Section 107.35—Operation of multiple small unmanned aircraft systems.

(f) Section 107.37(a)—Yielding the right of way.

(g) Section 107.39—Operation over people.

(h) Section 107.41—Operation in certain airspace.

(i) Section 107.51—Operating limitations for small unmanned aircraft.

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 17. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 18. In § 119.1, revise paragraphs (e)(9) and (10) and add paragraph (e)(11) to read as follows:

§ 119.1 Applicability.

*   *   *   *   *

(e) * * *

(9) Emergency mail service conducted under 49 U.S.C. 41906;

(10) Operations conducted under the provisions of § 91.321 of this chapter; or

(11) Small UAS operations conducted under part 107 of this chapter.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

■ 19. The authority citation for part 133 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702.

■ 20. In § 133.1, revise the introductory text to read as follows:

§ 133.1 Applicability.

Except for aircraft subject to part 107 of this chapter, this part prescribes—

*   *   *   *   *

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 21. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(f), 106(g), 40113, 44702, 45303.

■ 22. In § 183.23, revise paragraphs (b) and (c) and ad paragraph (d) to read as follows:

§ 183.23 Pilot examiners.

*   *   *   *   *

(b) Under the general supervision of the appropriate local Flight Standards Inspector, conduct those tests;

(c) In the discretion of the appropriate local Flight Standards Inspector, issue temporary pilot certificates and ratings to qualified applicants; and

(d) Accept an application for a remote pilot certificate with a small UAS rating and verify the identity of the applicant in a form and manner acceptable to the Administrator.

Issued under the authority provided by 49 U.S.C. 106(f), 40101 note; and Sec. 333 of Pub. L. 112–95, in Washington, DC, on June 21, 2016.

Anthony R. Foxx,

Secretary, Department of Transportation.

Michael P. Huerta,

Administrator, Federal Aviation Administration.

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